

**ARKANSAS CODE
OF 1987
ANNOTATED**

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ARKANSAS CODE OF 1987 ANNOTATED



VOLUME 17A 2010 Replacement TITLE 17: PROFESSIONS, OCCUPATIONS AND BUSINESSES (CHAPTERS 1-28)

Prepared by the Editorial Staff of the Publisher

Under the Direction and Supervision of the
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Sources

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Arkansas Advance Reports through 2010 Ark. LEXIS 82 (February 4, 2010) and 2010 Ark. App. LEXIS 167 (February 17, 2010).

Federal Supplement through February 10, 2010.

Federal Reporter 3d Series through February 10, 2010.

United States Supreme Court Reports through February 10, 2010.

Bankruptcy Reporter through February 10, 2010.

Arkansas Law Notes through the 2008 Edition.

Arkansas Law Review through Volume 61, p. 787.

University of Arkansas at Little Rock Law Review through Volume 30, p. 267.

A.L.R. 6th through Volume 17, p. 757.

ALR Fed. 2d through Volume 26, p. 381.

Titles of the Arkansas Code

- | | |
|---|---|
| 1. General Provisions | 16. Practice, Procedure, and Courts |
| 2. Agriculture | 17. Professions, Occupations, and Businesses |
| 3. Alcoholic Beverages | 18. Property |
| 4. Business and Commercial Law | 19. Public Finance |
| 5. Criminal Offenses | 20. Public Health and Welfare |
| 6. Education | 21. Public Officers and Employees |
| 7. Elections | 22. Public Property |
| 8. Environmental Law | 23. Public Utilities and Regulated Industries |
| 9. Family Law | 24. Retirement and Pensions |
| 10. General Assembly | 25. State Government |
| 11. Labor and Industrial Relations | 26. Taxation |
| 12. Law Enforcement, Emergency Management, and Military Affairs | 27. Transportation |
| 13. Libraries, Archives, and Cultural Resources | 28. Wills, Estates, and Fiduciary Relationships |
| 14. Local Government | |
| 15. Natural Resources and Economic Development | |

User's Guide

Differences in language, subsection order, punctuation, and other variations in the statute text from legislative acts, supplement pamphlets, and previous versions of the bound volume, are editorial changes made at the direction of the Arkansas Code Revision Commission pursuant to the authority granted in § 1-2-303.

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of the bound Volume 1 of the Code.

TITLE 17

PROFESSIONS, OCCUPATIONS, AND BUSINESSES

(CHAPTERS 29-79 IN VOLUME 17B; CHAPTERS 80-107 IN
VOLUME 17C)

SUBTITLE 1. PROFESSIONS GENERALLY

CHAPTER.

- 1. GENERAL PROVISIONS.
- 2-9. [RESERVED.]

SUBTITLE 2. NONMEDICAL PROFESSIONS

CHAPTER.

- 10. GENERAL PROVISIONS.
- 11. ABSTRACTERS.
- 12. ACCOUNTANTS.
- 13. AGRICULTURAL CONSULTANTS.
- 14. APPRAISERS.
- 15. ARCHITECTS.
- 16. ATHLETE AGENTS.
- 17. AUCTIONEERS.
- 18. AUTOMOTIVE PARTS DEALERS.
- 19. BAIL BONDSMEN.
- 20. BARBERS.
- 21. BEAUTY PAGEANTS.
- 22. BOXING, WRESTLING, ETC.
- 23. BUYERS OF PRECIOUS METALS.
- 24. COLLECTION AGENCIES.
- 25. CONTRACTORS.
- 26. COSMETOLOGY AND RELATED OCCUPATIONS.
- 27. COUNSELORS.
- 28. ELECTRICIANS.
- 29. EMBALMERS, FUNERAL DIRECTORS, AND FUNERAL ESTABLISH-
MENTS.
- 30. ENGINEERS.
- 31. FORESTERS.
- 32. GEOLOGISTS.
- 33. HEATING, VENTILATION, AIR CONDITIONING, AND REFRIGERATION
WORKERS.
- 34. HOMEBUILDERS. [REPEALED.]
- 35. INTERIOR DESIGNERS.
- 36. LANDSCAPE ARCHITECTS.
- 37. PEST CONTROL SERVICES.
- 38. PLUMBERS.
- 39. POLYGRAPH EXAMINERS AND VOICE STRESS ANALYSIS EXAMINERS.
- 40. PRIVATE INVESTIGATORS AND PRIVATE SECURITY AGENCIES.
- 41. PROFESSIONAL FUND RAISERS AND SOLICITORS. [REPEALED.]
- 42. REAL ESTATE LICENSE LAW.
- 43. SANITARIANS.

CHAPTER.

- 44. SCRAP METAL DEALERS.
- 45. SEPTIC TANK CLEANERS.
- 46. SOCIAL WORKERS. [REPEALED.]
- 47. SOIL CLASSIFIERS.
- 48. SURVEYORS.
- 49. TRANSIENT MERCHANTS.
- 50. WATER WELL CONSTRUCTORS.
- 51. WATERWORKS OPERATORS.
- 52. HOME INSPECTORS.
- 53. HEALTH EDUCATORS.
- 54. ARKANSAS MOLD INVESTIGATOR LICENSING ACT.
- 55-79. [RESERVED.]

SUBTITLE 3. MEDICAL PROFESSIONS

CHAPTER.

- 80. GENERAL PROVISIONS.
- 81. CHIROPRACTORS.
- 82. DENTISTS, DENTAL HYGIENISTS, AND DENTAL ASSISTANTS.
- 83. DIETITIANS.
- 84. HEARING INSTRUMENT DISPENSERS.
- 85. LAY MIDWIVES.
- 86. MASSAGE THERAPISTS.
- 87. NURSES.
- 88. OCCUPATIONAL THERAPISTS.
- 89. OPHTHALMIC DISPENSERS.
- 90. OPTOMETRISTS.
- 91. OSTEOPATHS.
- 92. PHARMACISTS AND PHARMACIES.
- 93. PHYSICAL THERAPISTS.
- 94. PHYSICIAN'S TRAINED ASSISTANTS. [REPEALED.]
- 95. PHYSICIANS AND SURGEONS.
- 96. PODIATRIC MEDICINE.
- 97. PSYCHOLOGISTS AND PSYCHOLOGICAL EXAMINERS.
- 98. REGISTRATION OF DISEASE INTERVENTION SPECIALISTS.
- 99. RESPIRATORY CARE PRACTITIONERS.
- 100. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.
- 101. VETERINARIANS AND ANIMAL TECHNICIANS.
- 102. ACUPUNCTURISTS.
- 103. SOCIAL WORKERS.
- 104. PERFUSIONISTS LICENSURE ACT.
- 105. PHYSICIAN ASSISTANTS.
- 106. CONSUMER-PATIENT RADIATION HEALTH AND SAFETY.
- 107. ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS.

*SUBTITLE 1. PROFESSIONS GENERALLY***CHAPTER 1****GENERAL PROVISIONS**

SECTION.

- 17-1-101. Examination credit for United States veterans and nurses.
- 17-1-102. Liability of committee mem-

SECTION.

bers of professional societies, review organizations, and hospital medical staffs.

SECTION.

17-1-103. Registration, certification, and licensing for criminal offenders.

17-1-104. Collection of personal informa-

SECTION.

tion for the purpose of child support enforcement.
17-1-105. Notification of mandatory reporters.

Cross References. Administrative procedure, occupational and professional licensing boards, § 25-15-201 et seq.

Effective Dates. Acts 1975, No. 634, § 2: Mar. 28, 1975. Emergency clause provided: "It having been determined by the General Assembly that members of professional review committees perform invaluable services to the people of the State of Arkansas, that there is an immediate need for the establishment of such committees, and that this act is immediately necessary, an emergency is hereby declared to exist, and, the act being necessary for the preservation of the public health, safety and welfare, it shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 1317, § 16: Oct. 1, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that Arkansas

children and their parents or guardians should be secure in the knowledge that professional persons who have direct contact with children do not have criminal records and are not a potential threat to the safety of their children; and that an increasing number of incidents are occurring where professional persons are abusing children entrusted into their care; and that in some cases these incidents could have been avoided had the persons been subjected to a criminal background check. It is further found and determined that, in some instances, allegations of employee criminal misconduct involving children are not being investigated. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on October 1, 1997."

CASE NOTES

Cited: Hayden v. Bracy, 744 F.2d 1338 (8th Cir. 1984).

17-1-101. Examination credit for United States veterans and nurses.

(a) In all examinations held by any and all state boards, commissions, or bureaus for the purpose of examining applicants for any license or permit to engage in any profession, trade, or employment, all applicants for such examinations who are veterans of the Army, Navy, Marines, or Nurses of the United States shall have a credit of ten percent (10%) over and above all applicants who are not such veterans or nurses.

(b) The only requirement on the part of the applicant for examination to secure credit of ten percent (10%) shall be the delivery to the examining board, commission, or bureau of the original or a duly and properly executed certified copy of an honorable discharge from the Army, Navy, Marines, or Nurses of the United States.

(c) The advantage given to veterans or nurses under and by this section shall be the same as is given to such veterans and nurses by the acts of Congress for federal positions and licenses.

History. Acts 1941, No. 298, §§ 1, 2; ences in public employment, § 21-3-301 et
A.S.A. 1947, §§ 11-1701, 11-1702. seq.

Cross References. Veterans prefer-

17-1-102. Liability of committee members of professional societies, review organizations, and hospital medical staffs.

(a) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, members of the following organizations for any act or proceeding undertaken or performed within the scope of the functions of any such committee which is formed to maintain the professional standards of the society established by its bylaws, if the committee member acts without malice, has made a reasonable effort to obtain the facts of the matter as to which he or she acts, and acts in reasonable belief that the action taken by him or her is warranted by the facts known to him or her after a reasonable effort to obtain facts:

(1) A duly appointed committee of a state or local professional society;

(2) A professional services review organization appointed pursuant to state or federal statute; or

(3) A duly appointed committee of a medical staff of a licensed hospital, provided that the medical staff operates pursuant to written bylaws that have been approved by the governing board of the hospital.

(b) "Professional society" includes societies of the healing arts, legal, accounting, architectural, and engineering professions having as members at least a majority of the eligible licentiates in the profession served by the particular body.

History. Acts 1975, No. 634, § 1; A.S.A. 1947, § 71-5101.

Cross References. Accountants,
§ 17-12-101 et seq.

Architects, § 17-15-101 et seq.

Attorneys at law, § 16-22-201 et seq.

Engineers, § 17-30-101 et seq.

Healing arts, § 17-80-101 et seq.

Immunity of healing arts board members, § 17-80-103.

17-1-103. Registration, certification, and licensing for criminal offenders.

(a)(1) It is the policy of the State of Arkansas to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship.

(2) The public is best protected when offenders are given the opportunity to secure employment or to engage in a meaningful trade, occupation, or profession.

(b)(1)(A) Subject to the provisions of subdivision (b)(2) of this section in determining eligibility under this section, a board, commission,

department, or an agency may take into consideration conviction of certain crimes that have not been annulled, expunged, or pardoned.

(B) However, such convictions shall not operate as an automatic bar to registration, certification, or licensing for any trade, profession, or occupation.

(2) The following criminal records shall not be used, distributed, or disseminated in connection with an application for a registration, license, or certificate:

(A) Records of arrest not followed by a valid felony conviction by the courts;

(B) Convictions that have been annulled or expunged or pardoned by the Governor; and

(C) Misdemeanor convictions, except misdemeanor sex offenses and misdemeanors involving violence.

(c) The board, commission, department, or agency shall state explicitly in writing the reasons for a decision that prohibits the applicant from practicing the trade, occupation, or profession if the decision is based, in whole or in part, on conviction of a felony.

(d) For the purposes of this section, completion of the following shall be deemed prima facie evidence of sufficient rehabilitation:

(1) Probation or parole supervision; and

(2) A period of five (5) years after final discharge or release from any term of imprisonment in the state penitentiary without any subsequent conviction.

(e) Any complaints concerning the violation of this section shall be adjudicated in accordance with the procedure set forth in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., for administrative and judicial review.

(f)(1) This section shall apply to any board, commission, department, agency, or any other body that deals in licensing or regulating a profession, trade, or occupation in the State of Arkansas.

(2) It shall be the duty of the Secretary of State to make this section known to any board, commission, department, or agency affected by this section.

(g) This section shall not apply to teacher licensure or certification or nursing licensure and certification as governed by §§ 6-17-410 and 17-87-312 respectively.

History. Acts 1973, No. 280, §§ 1-6; A.S.A. 1947, §§ 71-2601 — 71-2606; Acts 1997, No. 1317, § 1; 2001, No. 752, § 3; 2005, No. 1994, § 487.

Amendments. The 2005 amendment inserted the subdivision designations in (a) and (b); redesignated former (c) and (c)(1)-(3) as present (b)(2) and (b)(2)(A)-(C); redesignated former (d)-(f) as present (c)-(e) and former (g) and (h) as present

(f)(1) and (f)(2); deleted former (i); added (g); and made minor stylistic changes.

Cross References. Arkansas State Criminal Records Act, definitions of, § 12-12-1503.

Arkansas State Criminal Records Act, intent of, § 12-12-1502.

Teacher licensure, § 6-17-410.

Unrestricted information, records, immunity from civil liability, § 12-12-1506.

CASE NOTES**Municipal Regulation.**

This section, which states a broad policy of rehabilitating those who have been convicted of a crime, does not conflict with § 14-57-302, which allows cities to regulate the operation of taxicabs, because this section does not attempt to give a person a right to a particular job; therefore, a city ordinance which prohibited the issuance

of a taxicab driver's permit to any person convicted of driving while under the influence of intoxicating liquors within the past three years did not violate Ark. Const., Art. 12, § 4 which prohibits cities from enacting local laws contrary to state statute. *Bolden v. Watt*, 290 Ark. 343, 719 S.W.2d 428 (1986).

17-1-104. Collection of personal information for the purpose of child support enforcement.

(a) On and after July 1, 1997, all persons, agencies, boards, commissions, or other licensing entities issuing any occupational, professional, or business license pursuant to titles 2-6, 8, 9, 14, 15, 17, 20, 22, 23, and 27 of the Arkansas Code Annotated shall record the name, address, and social security number of each person applying for such a license.

(b)(1) The name, address, and social security number of the person shall appear on the application. However, where an application is not required, the name, address, and social security number shall appear on the occupational, professional, or business license.

(2) On and after October 1, 2000, the name, address, and social security number of each person issued a noncommercial driver's license under § 27-1-101 et seq. shall appear on the application for the noncommercial driver's license. This information shall be maintained by the Revenue Division of the Department of Finance and Administration as confidential information not subject to disclosure under any commercial agreement, request under the Freedom of Information Act of 1967, § 25-19-101 et seq., as well as all applicable state and federal confidentiality requirements.

(c) The name, address, and social security number of each person issued a license pursuant to titles 2-6, 8, 9, 14, 15, 17, 20, 22, 23, and 27 of the Arkansas Code Annotated shall be stored by the person, agency, board, commission, or other licensing entity in an electronic automated data system capable of transferring the information to electronic media. On a quarterly basis, the licensee database shall be transmitted to or made available to the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration for the purposes of cross matching, location, and enforcement of child support obligations.

(d)(1) Only those persons, agencies, boards, departments, commissions, or other licensing entities that issue five hundred (500) or more licenses each year, or that have a membership of five hundred (500) or more, are required to implement an automated data system as set forth in subsection (c) of this section.

(2) Those persons, agencies, boards, departments, commissions, or their licensing entities that issue fewer than five hundred (500) licenses

each year, or that have a membership of fewer than five hundred (500), shall not be required to transmit licensee information to the Office of Child Support Enforcement on an automated basis.

(e) The name of any member or representative of a licensing entity who refuses to provide license information to the Office of Child Support Enforcement shall be certified by the Office of Child Support Enforcement to the office of the Governor and to the Legislative Council.

(f)(1) Member and applicant social security information required to be collected under this section shall be maintained in a confidential manner by the licensing entity.

(2) Except as authorized herein, such social security number information shall not be released publicly and shall be excepted from the open public record requirements of the Freedom of Information Act of 1967, § 25-19-101 et seq.

(3) Disclosure of such social security information without the consent of the individual or without court authorization shall be a Class B misdemeanor.

(4) Confidentiality requirements associated with the collection and maintenance of social security numbers by the licensing entity shall be appropriately disseminated and posted in the licensing entity's offices.

History. Acts 1997, No. 1163, § 1; was repealed by Acts 1995, No. 752, § 2. 1999, No. 1514, § 21. The section was derived from Acts 1993,

Publisher's Notes. Former § 17-1-104, concerning the revocation of a driver's license for failure to pay child support, No. 1240, § 1. For present law, see § 9-14-239.

17-1-105. Notification of mandatory reporters.

Each board, commission, or other entity that licenses mandatory reporters of child abuse and neglect shall provide notice to each licensee concerning the online and web-based child abuse reporting program required under § 16-10-138.

History. Acts 2007, No. 703, § 16.

CHAPTERS 2-9

[Reserved]

SUBTITLE 2. NONMEDICAL PROFESSIONS

CHAPTER 10

GENERAL PROVISIONS

SECTION.

17-10-101. Responsibilities of real estate licensees and appraisers.

17-10-101. Responsibilities of real estate licensees and appraisers.

(a) As used in this section:

(1) “Agent” means any licensee as defined under § 17-42-103(10)(A) or any appraiser;

(2) “Appraiser” means any appraiser, state-certified appraiser, state-certified residential appraiser, state-licensed appraiser, or state-registered appraiser, as those terms are defined under § 17-14-103;

(3) “Licensee” shall have the same meaning as provided by § 17-42-103(10);

(4) “Offender” shall have the same meaning as provided by § 12-12-903(7);

(5) “Psychologically impacted” means without limitation that the real property was or was at any time suspected to have been the site of a homicide, suicide, or felony; and

(6) “Transferee” means and includes without limitation a buyer, purchaser, grantee, lessee, tenant, or one receiving any estate or interest in real property.

(b) The existence of any fact or circumstance or suspicion of the existence of any fact or circumstance that indicates a property might be or is psychologically impacted is not a material fact that must be disclosed in a real property transaction.

(c) No cause of action shall arise against an appraiser of real property, a licensee as agent of an owner, or a licensee as agent of a potential or actual transferee of real property for failure to inquire about, make a disclosure about, or release information about the existence of any fact or circumstance or suspicion of the existence of any fact or circumstance that indicates that the real property is psychologically impacted.

(d) No cause of action shall arise against an appraiser of real property, a licensee as agent of an owner, or a licensee acting as agent of a potential or actual transferee of real property for failure to inquire about, make a disclosure about, or release information about the existence of the fact that real property is located in the vicinity of an offender.

History. Acts 2003, No. 1739, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Professions, Occupations, Businesses, Responsibilities of Real Estate Licensees and Appraisers, 26 U. Ark. Little Rock L. Rev. 457.

CHAPTER 11
ABSTRACTERS

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
 - 2. ABSTRACTERS' BOARD OF EXAMINERS. [REPEALED.]
 - 3. CERTIFICATION.
 - 4. ARKANSAS ABSTRACTERS' BOARD.
-

Effective Dates. Acts 1969, No. 109,
§ 15: July 1, 1969.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-11-101. Title.
17-11-102. Definitions.

SECTION.

17-11-103. Penalties.

Effective Dates. Acts 1980 (1st Ex. Sess.), No. 23, § 3: Jan. 25, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Abstracters' Licensing Law of 1969 does not adequately define the term 'abstract plant' to provide that in counties having two courthouses an abstract plant is required only to have the records per-

taining to real property located within one district of the county, and that this act is immediately necessary to provide such definition. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Negligence in preparing abstract of title as ground of liability to one other than person ordering abstract. 50 A.L.R.4th 314.

C.J.S. 76 C.J.S., Records, §§ 37, 38, 40.

17-11-101. Title.

This chapter shall be known and may be cited as the "Abstracters' Licensing Law of 1969".

History. Acts 1969, No. 109, § 1; A.S.A. 1947, § 71-101.

17-11-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) “Abstract of title” means a compilation in orderly arrangement of the materials and facts of record affecting the title to a specific piece of land, issued under a certificate certifying to the matters therein contained;

(2)(A) “Abstract plant” means a set of records in which an entry has been made of all documents or matters which under the law impart constructive notice of matters affecting title to all real property or any interest therein or encumbrances thereon, which have been filed or recorded in the county or district thereof for which a title plant is maintained from earliest records available in the county or district thereof and continually thereafter.

(B) Such records shall consist of an index or indices in which notations of or references to any documents that describe the property affected thereby are posted, entered, or otherwise included, according to the property described therein or copies or briefs of all documents that describe the property affected thereby which are sorted and filed according to the property described therein;

(3) “Business of abstracting” means the making, compiling, or selling of abstracts of title or title evidence purporting to be based upon information from an abstract plant;

(4) “Certificate of authority” means the authorization to engage in the business of abstracting in a county or district thereof in the State of Arkansas granted to a person, firm, or private corporation in possession of an abstract plant; and

(5) “Registered abstracter” means an individual registered under this act and holding an operative certificate of registration to prepare abstracts of title to real property in any county in this state or any person holding a license to practice law within the State of Arkansas.

History. Acts 1969, No. 109, § 2; 1980 109, codified as §§ 17-11-101 — 17-11-103, 17-11-201 — 17-11-204, 17-11-301 — § 71-102. 17-11-306, 17-11-340 — 17-11-343.

Meaning of “this act”. Acts 1969, No.

CASE NOTES

Materials and Facts of Record.

As a matter of law, a complaint for money damages not yet reduced to judgment was not a matter of record required

to be included in an abstract of title to real property. *Bank of Cave City v. Abstract & Title Co.*, 38 Ark. App. 65, 828 S.W.2d 852 (1992).

17-11-103. Penalties.

(a) Any person, firm, partnership, association, or corporation violating any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100)

for each offense. Each succeeding day on which the provisions of this chapter are violated shall be a separate offense.

(b) If any licensed abstracter shall willfully falsify any public record or information contained therein, he or she shall be guilty of a felony and punished accordingly in addition to his or her civil liability.

History. Acts 1969, No. 109, §§ 11, 12;
A.S.A. 1947, §§ 71-111, 71-112.

CASE NOTES

Cited: Hurst v. Rice, 278 Ark. 94, 643
S.W.2d 563 (1982).

SUBCHAPTER 2 — ABSTRACTERS' BOARD OF EXAMINERS

SECTION.

17-11-201 — 17-11-204. [Repealed.]

Effective Dates. Acts 1997, No. 250, § 258; Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared

to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-11-201 — 17-11-204. [Repealed.]

Publisher's Notes. These sections, concerning the Abstractor's Board of Examiners, were repealed by Acts 2007, No. 1042, § 2. The sections were derived from the following sources:

17-11-201. Acts 1969, No. 109, §§ 3, 4; A.S.A. 1947, §§ 71-103, 71-104; Acts 1997, No. 250, § 121.

17-11-202. Acts 1969, No. 109, § 4; A.S.A. 1947, § 71-104.

17-11-203. Acts 1969, No. 109, § 4; A.S.A. 1947, § 71-104.

17-11-204. Acts 1969, No. 109, § 10; A.S.A. 1947, § 71-110; Acts 1997, No. 13, § 1.

SUBCHAPTER 3 — CERTIFICATION

SECTION.

17-11-301. Certificate of registration required.

17-11-302. Certificate of registration — Application.

SECTION.

17-11-303. Certificate of registration — Examination.

17-11-304. Certificate of registration — Issuance or reapplication.

SECTION.

17-11-305. Certificate of registration —
Temporary.

17-11-306. Unregistered assistants.

17-11-307 — 17-11-319. [Reserved.]

17-11-320. Certificate of authority re-
quired.

17-11-321. Certificate of authority — Ap-
plication — Issuance.

17-11-322. Certificate of authority — Ex-
piration — Renewal.

SECTION.

17-11-323. Access to public records.

17-11-324. Bond, insurance, or personal
surety.

17-11-325 — 17-11-339. [Reserved.]

17-11-340. Revocation of certificates —
Grounds.

17-11-341. Revocation of certificates —
Procedure — Appeal.

17-11-342. Seal.

17-11-343. Abstract as evidence.

Cross References. Licenses and per-
mits, removal of disqualification for crimi-
nal offenses, § 17-1-103.

17-11-301. Certificate of registration required.

(a)(1) Every person, firm, or private corporation engaged in the business of abstracting in one (1) county only, shall be or have in its employ a registered abstracter.

(2) Every person, firm, or private corporation engaged in the business of abstracting in more than one (1) county in this state shall have at least one (1) registered abstracter for each county in which it maintains an abstract office.

(b) No person shall execute an abstract certificate or otherwise attest to the accuracy of abstracts unless the person is a registered abstracter as defined in this chapter.

(c)(1) Each person engaged in the business of abstracting who is a registered abstracter may fulfill the requirements of subsection (a) of this section in one (1) county only.

(2) No registered abstracter may fulfill the requirements of subsection (a) of this section for more than one (1) county or more than one (1) company at any one (1) time.

History. Acts 1969, No. 109, § 5; A.S.A.
1947, § 71-105.

17-11-302. Certificate of registration — Application.

(a) Any person desiring to become a registered abstracter under this chapter shall make application to the Arkansas Abstracters' Board for registration.

(b) The application shall be in a form prepared by the board and shall contain such information as may be necessary to assist the board in registration and to determine if the applicant is of good moral character.

(c) Except as provided in subsection (e) of this section, each application shall be accompanied by an examination fee in the sum of twenty-five dollars (\$25.00).

(d) Thereupon the board shall notify the applicant of the time and place of the next scheduled examination, and notice of the examination shall be given to the applicant by mail.

(e) Any person authorized to practice law in this state shall be issued a certificate of registration upon application, without examination and payment of fee.

History. Acts 1969, No. 109, § 5; A.S.A. substituted “Arkansas Abstractors’ Board” for “Abstracters’ Board of Examiners” in (a).
1947, § 71-105; Acts 2007, No. 1042, § 4.

Amendments. The 2007 amendment

17-11-303. Certificate of registration — Examination.

The examination required under this chapter shall be in the form of written interrogatories as may be prescribed by the Arkansas Abstracters’ Board to determine the proficiency of the applicant.

History. Acts 1969, No. 109, § 5; A.S.A. substituted “Arkansas Abstractors’ Board” for “Abstracters’ Board of Examiners,” and made a stylistic change.
1947, § 71-105; Acts 2007, No. 1042, § 5.

Amendments. The 2007 amendment inserted “required under this chapter,”

17-11-304. Certificate of registration — Issuance or reapplication.

(a) If the applicant satisfactorily passes the examinations and is of good moral character, the applicant shall be certified as a registered abstractor, and the certificate provided for shall be issued to him or her. The privileges granted by the certificate shall continue unless revoked, as provided in this chapter, or unless the certificate is otherwise surrendered to the Arkansas Abstracters’ Board.

(b) The certificate shall be in a form prescribed by the board and shall attest that the person possesses the knowledge, skill, ability, and understanding of abstracting and is designated a registered abstractor. The certificate shall be prominently displayed in the abstract office wherein the person is employed.

(c) An applicant failing to satisfy the board that he or she possesses the qualifications or proficiency to become a registered abstractor may reapply for registration if the application is accompanied by the examination fee provided for in § 17-11-302(c), but no application shall be submitted sooner than six (6) months following the date on which the last previous examination was administered to the applicant.

(d) Each holder of a certificate shall pay an annual fee to be set by the board.

History. Acts 1969, No. 109, § 5; A.S.A. in (a), substituted “provided in this chapter” for “hereinafter provided,” substituted “Arkansas Abstracters’ Board” for
1947, § 71-105; Acts 2007, No. 1042, § 6.

Amendments. The 2007 amendment,

“Abstracters’ Board of Examiners,” and made stylistic changes.

17-11-305. Certificate of registration — Temporary.

(a) The Arkansas Abstracters’ Board upon application to it by any person succeeding to the ownership of any abstract plant or business by any means other than by purchase, or any person who by reason of the incapacity of any registered abstracter owner of any abstract plant or business is required to assume the operation of the abstract plant or business, may grant to the person without examination a temporary certificate of registration.

(b) The fee for a temporary certificate of registration shall be fifteen dollars (\$15.00).

(c) This certificate shall expire six (6) months after its date or upon the expiration of sixty (60) days after the next regularly scheduled examinations which could be taken by the applicant under the rules and regulations of the board, whichever period is longer.

(d) The board shall notify the applicant by mail of the time and place of the examination.

History. Acts 1969, No. 109, § 5; A.S.A. substituted “Arkansas Abstracters’ Board” for “Abstracters’ Board of Examiners” in (a).
1947, § 71-105; Acts 2007, No. 1042, § 7.

Amendments. The 2007 amendment

17-11-306. Unregistered assistants.

Nothing in this chapter shall be construed as prohibiting any person, firm, or corporation holding a valid and subsisting certificate of authority from employing such clerical and stenographic assistants as may be necessary in the conduct of its business who are not registered under this chapter.

History. Acts 1969, No. 109, § 9; A.S.A. 1947, § 71-109.

17-11-307 — 17-11-319. [Reserved.]

17-11-320. Certificate of authority required.

No person, firm, or corporation shall engage in the business of abstracting in this state until a certificate of authority has been issued to the person, firm, or corporation by the Arkansas Abstracters’ Board.

History. Acts 1969, No. 109, § 7; A.S.A. substituted “Arkansas Abstracters’ Board” for “Abstracters’ Board of Examiners.”
1947, § 71-107; Acts 2007, No. 1042, § 8.

Amendments. The 2007 amendment

17-11-321. Certificate of authority — Application — Issuance.

(a) Any person, firm, or corporation desiring to engage in the business of abstracting in this state shall make application to the Arkansas Abstracters' Board for a certificate of authority.

(b) The application shall:

(1) Be in a form prepared by the board;

(2) Contain such information as may be necessary to assist the board in determining whether the applicant has complied with the provisions of this chapter; and

(3) Be accompanied by an application fee in the sum of twenty-five dollars (\$25.00).

(c) The applicant shall furnish proof that:

(1) The applicant has available an abstract plant for each county for which abstracts will be prepared, which abstract plant shall be made available for examination by the board;

(2) The applicant is or has employed a registered abstracter; and

(3) The bond requirements provided for in § 17-11-324 have been complied with.

(d)(1) When the foregoing things have been done or conditions exist and approved by the board, the board shall issue a certificate of authority in such form as it may prescribe, attesting to the same and indicating the county of this state wherein the applicant may operate.

(2) The certificate shall be prominently displayed in the office of the applicant.

History. Acts 1969, No. 109, § 7; A.S.A. substituted "Arkansas Abstracters' Board" for "Abstracters' Board of Examiners" in (a).

Amendments. The 2007 amendment

17-11-322. Certificate of authority — Expiration — Renewal.

(a)(1) All certificates of authority issued pursuant to the provisions of this chapter shall expire on the same date, irrespective of when issued.

(2) Expiration dates of the certificates, either renewal or original, shall be the July 1 following the year from the preceding expiration date.

(b) Current and subsisting certificates of authority shall be renewed as provided for in this section for a one-year period upon payment of a renewal fee in the sum to be set by the Arkansas Abstracters' Board.

(c)(1)(A) No more than sixty (60) days nor less than thirty (30) days prior to the expiration date of the certificate issued, the board shall cause a notice of expiration and application for renewal to be mailed to each of the holders of the certificates.

(B) The notice and application shall be in a form prepared by the board.

(2) Upon determination by the board of the applicant's compliance with this chapter, a renewal certificate of authority shall be issued to the applicant.

(d)(1)(A) If a holder of a certificate of authority fails to apply for renewal of his or her authority and to pay the fee provided therefor, the board shall cause to be mailed to the holder a notice that his or her certificate has expired and is no longer valid authority for the person to engage in the business of abstracting.

(B) The notice shall be mailed not more than thirty (30) days following the certificate expiration date.

(C) The holder shall be granted an additional period of sixty (60) days from the date of mailing the notice within which to file his or her application for renewal.

(2)(A) The name of any holder failing to renew his or her authority pursuant to the terms of this section shall be stricken from the records of the board.

(B) Such a person, firm, or corporation shall no longer engage in the business of abstracting in this state until so authorized by the board.

History. Acts 1969, No. 109, § 7; A.S.A. substituted “Arkansas Abstracters’ Board” for “Abstracters’ Board of Examiners” in (b).
1947, § 71-107; Acts 2007, No. 1042, § 10.
Amendments. The 2007 amendment

17-11-323. Access to public records.

(a)(1) Holders of certificates of authority and their employees in the conduct of the business of abstracting shall have access to the public records in any office of any city or county or of the state.

(2) They shall be permitted to make memoranda or notations therefrom or copies thereof and to occupy reasonable space with equipment for that purpose, subject to the reasonable regulation of the custodian of the public records and during the business hours of the office, in order to enable certificate holders to make and prepare abstracts and to compile, post, copy, and maintain their books, records, and indices.

(b) No persons other than the custodian of the records shall remove real estate records from the recorder’s office.

History. Acts 1969, No. 109, § 7; A.S.A. 1947, § 71-107; Acts 1991, No. 1002, § 1.

CASE NOTES

Space and Equipment.

County judge’s action in providing space in his office in the courthouse for use by abstracter where there was no room for abstracter in circuit clerk’s office and permitting her to have telephone in the court-

house for her business was a matter within the sound discretion of the county judge. *Rhine v. Thompson*, 229 Ark. 114, 313 S.W.2d 369 (1958) (decision under prior law).

17-11-324. Bond, insurance, or personal surety.

(a)(1)(A) Before the certificate of authority is issued, the applicant shall file with the Arkansas Abstracters' Board a bond approved by the board conditioned upon the payment by the applicant of any and all damages that may be sustained by or may accrue to any person, firm, or corporation for whom the applicant may compile, make, or furnish abstracts of title by reason of or on account of any error, deficiency, or mistake in any abstract or certificate, or any continuation, made or issued by the abstracter over its authorized signature and seal.

(B) The bond shall be written by a corporate surety or other company issuing such bonds licensed and authorized to do business in this state.

(2)(A) The bond shall remain in full force and effect for a period of one (1) year and may be renewed annually by a continuation certificate.

(B) However, no continuation certificate shall operate to increase the penal sum of the bond beyond the limits established in this section.

(3)(A) The penal sum of the bond shall be dependent upon the aggregate population, according to the latest federal census, of all counties in which the applicant proposes to conduct the business of abstracting, as follows:

If the population is:		The penalty of the bond shall be:
Less than	25,000	\$ 5,000
More than	25,000 but less than 50,000	10,000
	50,000 but less than 100,000	15,000
	100,000 but less than 200,000	20,000
	200,000 but less than 500,000	25,000
Over	500,000	50,000

(B) No person, firm, or corporation shall be required at any time to have in force and effect and filed with the board valid bonds in excess of the penal sum of twenty-five thousand dollars (\$25,000).

(b)(1) In lieu of the bond or bonds provided for in subsection (a) of this section, the applicant may file proof with the board that he or she carries abstracters' liability insurance in such a sum as would be required using the population scale in subdivision (a)(3)(A) of this section.

(2) The proof shall be the filing of the actual policy or a certificate showing the issuance thereof by the insurance company.

(c)(1) In lieu of bond or bonds or liability insurance provided for in subsections (a) and (b) of this section, the applicant shall have the right to file with the board a personal surety bond in such a sum as would be required using the population scale in subdivision (a)(3)(A) of this section, made in favor of any person or client that may suffer a loss for

which he or she is liable, which shall be accepted in lieu of the insurance policy.

(2) The personal bond shall have the signatures of at least three (3) other persons thereon whose total net worth shall be at least three (3) times the total amount of the personal bond.

(3) The applicant shall pay for the actual cost of the credit reports on the bondsmen.

History. Acts 1969, No. 109, § 6; A.S.A. 1947, § 71-106; Acts 2007, No. 1042, § 11.

Amendments. The 2007 amendment substituted “Arkansas Abstracters’

Board” for “Abstracters’ Board of Examiners” in (a)(1)(A), and made stylistic changes.

17-11-325 — 17-11-339. [Reserved.]

17-11-340. Revocation of certificates — Grounds.

(a) The Arkansas Abstracters’ Board is authorized, after a hearing as provided in § 17-11-341, to cancel and revoke any certificate of registration issued to any person under the provisions of this chapter:

(1) For a violation of any of the provisions of this chapter;

(2) Upon a conviction of the holder of such a certificate of a crime involving moral turpitude; or

(3) If the board finds the holder to be guilty of habitual carelessness or of fraudulent practices in the conduct of the business of abstracting.

(b) The board is authorized, after a hearing as provided in § 17-11-341, to cancel and revoke any certificate of authority issued to any person, firm, or corporation under the provisions of this chapter for:

(1) Failure to furnish the bond or bonds, or other securities, required by § 17-11-324;

(2) Failure to properly maintain an abstract plant;

(3) Failure to have employed a registered abstracter as provided in § 17-11-301; or

(4) Otherwise violating any of the provisions of this chapter.

History. Acts 1969, No. 109, § 8; A.S.A. 1947, § 71-108; Acts 2007, No. 1042, § 12.

Amendments. The 2007 amendment substituted “Arkansas Abstracters’

Board” for “Abstracters’ Board of Examiners” in (a).

17-11-341. Revocation of certificates — Procedure — Appeal.

(a)(1) Upon a verified complaint being filed with the Arkansas Abstracters’ Board or upon the board’s own motion filing a complaint charging the holder of a certificate of registration with a violation of any of the provisions of this chapter, or conviction of a crime involving moral turpitude, or with habitual carelessness or fraudulent practices in the conduct of the business of abstracting, or charging the holder of a certificate of authority with failure to furnish the bond or bonds, or other securities, required by § 17-11-324, or with failing to have employed a registered abstracter as provided in § 17-11-301, or with a violation of any of the provisions of this chapter, the board shall

immediately notify in writing by registered mail, with return receipt, the holder of the certificate of the filing of the complaint and furnish the holder with a copy of the complaint.

(2) The board shall at the same time require the holder of the certificate to appear before it on a day fixed by the board, not less than twenty (20) days nor more than forty (40) days from the date of the service of the complaint on the holder of the certificate, and to show cause why the certificate should not be cancelled and revoked.

(3) Under the hand of its president and the seal of the board, the board may subpoena witnesses and compel their attendance and may require the production of books, papers, and other documents.

(4) The president or the secretary may administer oaths or affirmations to witnesses appearing before the board.

(5)(A) If any person refuses to obey any subpoena so issued or refuses to testify or to produce any books, papers, or other documents, the board may present its petition to any court of record, setting forth the facts.

(B) Thereupon the court shall, in a proper case, issue its subpoena to the person requiring his or her attendance before the court and there to testify or produce such books, papers, and documents as may be deemed necessary and pertinent.

(6) The holder of the certificate shall be entitled to counsel at any hearing before the board or any other hearing involving revocation of his or her certificate.

(7) The board shall cause a transcript of any testimony taken to be made by a reporter or stenographer.

(b)(1)(A) Either the respondent or the complainant may appeal from the decision of the board to the circuit court in the county in which the respondent has his or her or its place of business.

(B) The appeal shall be taken within thirty (30) days after the decision of the board by causing a written notice of appeal to be served on the secretary of the board and executing a bond to the State of Arkansas, with surety to be approved by the secretary of the board, conditioned to pay all costs that may be adjudged against the appellant.

(2) Upon an appeal's being taken, the secretary of the board shall immediately make out a return of the proceedings in the matter before the board with its decision thereon and file them together with the bond and all the papers pertaining thereto in his or her possession, including a certified record of testimony taken at the hearing, with the clerk of the court to which the appeal is taken.

(3) The court shall hear the appeal as a trial de novo, and the costs of the appeal, including the furnishing of the testimony, shall be taxed as the court may direct.

(4) An appeal shall stay the cancellation of any certificate of registration or certificate of authority until the final decision is had on appeal.

History. Acts 1969, No. 109, § 8; A.S.A. 1947, § 71-108; Acts 2007, No. 1042, § 13. substituted “Arkansas Abstracters’ Board” for “Abstracters’ Board of Examiners” in (a)(1).

Amendments. The 2007 amendment

17-11-342. Seal.

Any licensee under this chapter shall provide a seal, which shall have stamped on the license the name of the licensee, and shall deposit with the Arkansas Abstracters’ Board an impression of the seal and the names of all persons authorized to sign certificates to abstracts on behalf of the licensee.

History. Acts 1969, No. 109, § 11; A.S.A. 1947, § 71-111; Acts 2007, No. 1042, § 14. substituted “Arkansas Abstracters’ Board” for “Abstracters’ Board of Examiners,” and made stylistic changes.

Amendments. The 2007 amendment

CASE NOTES

Cited: Hurst v. Rice, 278 Ark. 94, 643 S.W.2d 563 (1982).

17-11-343. Abstract as evidence.

An abstract or photostat or verbatim copy of any public record, where certified by and impressed with the official seal of any licensed abstracter, shall be admissible in evidence, if otherwise admissible, on behalf of any party litigant in any court in the State of Arkansas and shall be prima facie evidence of the facts recited therein.

History. Acts 1969, No. 109, § 11; A.S.A. 1947, § 71-111.

RESEARCH REFERENCES

Ark. L. Rev. Authentication and Identification, 27 Ark. L. Rev. 332.

CASE NOTES

Cited: Hurst v. Rice, 278 Ark. 94, 643 S.W.2d 563 (1982).

SUBCHAPTER 4 — ARKANSAS ABSTRACTERS’ BOARD

SECTION.

17-11-401. Creation — Members.

17-11-402. Organization and proceedings.

SECTION.

17-11-403. Duties and powers.

17-11-401. Creation — Members.

(a) The Arkansas Abstracters' Board is created.

(b)(1) The board shall consist of five (5) members appointed by the Governor, subject to confirmation by the Senate, for a term of six (6) years.

(2) Two (2) members shall:

(A) Be actively involved in the making of abstracts of real estate titles in this state for a period of at least five (5) years before appointment; and

(B) Serve an initial term of six (6) years;

(3) Two (2) members shall:

(A) Be citizens of this state; and

(B) Serve an initial term of four (4) years; and

(4) One (1) member shall:

(A) Be knowledgeable of the abstract business; and

(B) Serve an initial term of two (2) years.

(c) A vacancy on the board caused by death, resignation, or otherwise shall be filled by appointment of the Governor, subject to confirmation by the Senate.

(d)(1) A member may be appointed to successive terms.

(2) No two (2) members shall be appointed from the same county.

(e)(1) Each member shall serve without compensation.

(2) However, a member may be entitled to receive travel and expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 2007, No. 1042, § 3.

A.C.R.C. Notes. Acts 2007, No. 1042, § 1, provided: "The Abstracters' Board of Examiners established by Arkansas Code § 17-11-201 et seq. is abolished and its powers and duties are transferred to the

Arkansas Abstracters' Board by a type 2 transfer under § 25-2-105. (b) For the purpose of this section, the Arkansas Abstracters' Board shall be considered a principal department established by Acts 1971, No. 38."

17-11-402. Organization and proceedings.

(a) The Arkansas Abstracters' Board shall elect a chair and a secretary-treasurer.

(b) The chair and secretary-treasurer of the board shall have the power to administer oaths.

(c) The board shall have a seal and shall have the power to compel the attendance of witnesses.

History. Acts 2007, No. 1042, § 3.

17-11-403. Duties and powers.

(a)(1) The Arkansas Abstracters' Board shall keep a register and shall record the following information in the register:

(A) The name and the place of business of each applicant for registration and certification;

(B) A notation of the action taken by the board on each application for registration and each application for certification;

(C) The date upon which each certificate of registration and each certificate of authority are issued; and

(D) Such other information as the board deems appropriate.

(2) The board shall maintain such other records, registers, and files as may be necessary for the proper administration of its duties under this subchapter.

(b) The board may adopt rules for the proper administration of its powers and duties and the carrying out of the purposes of this subchapter.

History. Acts 2007, No. 1042, § 3.

A.C.R.C. Notes. Acts 2010, No. 6, § 3, provided: "PROFESSIONAL FEES. The appropriation made available in the Professional Fees Line Item of this Act shall be made available to the board for the

purpose of contracting an independent or private investigator to perform any investigative task as needed or may be required by law. Abstracter Board members may not act as investigators nor do investigative work required by the board."

CHAPTER 12

ACCOUNTANTS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS STATE BOARD OF PUBLIC ACCOUNTANCY.
3. INITIAL LICENSURE.
4. REGISTRATION OF FIRMS.
5. LICENSE RENEWAL.
6. REVOCATION AND SUSPENSION.
7. LIABILITY OF ACCOUNTANTS.

A.C.R.C. Notes. References to "this chapter" or "subchapter 5" in the text of sections of this chapter enacted prior to 1987 may not apply to § 17-12-507 or to subchapter 7, which were enacted subsequently.

Publisher's Notes. Acts 1975, No. 160,

§ 24, provided in part that nothing in this chapter would invalidate or affect any action taken under any law in effect prior to July 9, 1975, nor would it invalidate or affect any proceeding instituted under the law before July 9, 1975.

RESEARCH REFERENCES

ALR. Statute or regulation restricting use of terms such as "accountant," "public accountant," or "certified public accountant". 4 A.L.R.4th 1201.

Contractual restriction on right to practice, incident to sale of practice or withdrawal from accountancy partnership. 13 A.L.R.4th 661.

Covenant against competition in accountant's employment contract. 15 A.L.R.4th 559.

Privileged communications between accountant and client. 33 A.L.R.4th 539.

Liability of independent accountant to investors or shareholders. 35 A.L.R.4th 225.

Application of statute of limitations to actions for breach of duty in performing services of public accountant. 7 A.L.R.5th 852.

Liability of independent accountant to shareholders or investors for fraud and

deceit. 48 A.L.R.5th 389.

Wrongful discharge based on public policy derived from professional ethics code. 52 A.L.R.5th 405.

Am. Jur. 1 Am. Jur. 2d, Accountants, § 1 et seq.

C.J.S. 1 C.J.S., Accountants, § 4 et seq.

U. Ark. Little Rock L.J. Note, Constitutional Law — Commercial Speech — Face-to-Face Solicitation by Certified Public Accountants (But Not Attorneys?) is Protected Speech Under the First Amendment, 16 U. Ark. Little Rock L.J. 683.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-12-101. Title.
- 17-12-102. Purpose.
- 17-12-103. Definitions.
- 17-12-104. Penalty.
- 17-12-105. Injunctions.
- 17-12-106. Unlawful acts.

SECTION.

- 17-12-107. Permissible acts.
- 17-12-108. CPA construed.
- 17-12-109. Accountants' working papers.
- 17-12-110. [Repealed.]
- 17-12-111. Evidence.
- 17-12-112. [Repealed.]

Effective Dates. Acts 1975, No. 160, § 25: July 1, 1975.

Acts 1977, No. 183, § 4: Feb. 17, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that Acts 1975, No. 160 allowed only a period of six months for certain qualified public accountants to register with the Board of Public Accountancy; that some persons who were eligible to register were not advised of this cutoff date and consequently did not register; that this act is designed to extend the period for such persons to register and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full

force and effect from and after its passage and approval."

Acts 1979, No. 432, § 10: Mar. 20, 1979. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that in order to properly define, describe and classify all revenues and other income which are required to be deposited in the State Treasury, it is necessary that the provisions of this act become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in full force from and after its passage and approval."

Acts 1999, No. 180, § 41: Jan. 1, 2000.

17-12-101. Title.

This chapter may be cited as the "Public Accountancy Act of 1975".

History. Acts 1975, No. 160, § 1; A.S.A. 1947, § 71-611.

17-12-102. Purpose.

It is the policy of this state, and the purpose of this chapter, to promote the dependability of information which is used for guidance in financial transactions or for accounting for or assessing the status or performance of commercial and noncommercial enterprises, whether public or private. The public interest requires:

(1) That persons attesting as experts in accountancy to the reliability or fairness of presentation of such information be qualified in fact to do so;

(2) That a public authority competent to prescribe and assess the qualifications of public accountants be established; and

(3) That the attestation of financial information by persons professing expertise in accountancy be reserved to persons who demonstrate their ability and fitness to observe and apply the standards of the accounting profession.

History. Acts 1975, No. 160, § 1; A.S.A. 1947, § 71-611.

17-12-103. Definitions.

(a) As used in this chapter:

(1) "AICPA" means the American Institute of Certified Public Accountants, or its successor;

(2) "Attest" means providing the following financial statement services:

(A) An audit or other engagement to be performed in accordance with the "Statements on Auditing Standards";

(B) A review of a financial statement to be performed in accordance with the "Statements on Standards for Accounting and Review Services";

(C) An examination of prospective financial information to be performed in accordance with the "Statements on Standards for Attestation Engagements"; and

(D) An engagement to be performed in accordance with PCAOB standards;

(3) "Beneficial owner" means an individual who is the grantor and sole trustee of a revocable trust in which the individual reserves the unrestricted right to revoke the trust;

(4) "Board" means the Arkansas State Board of Public Accountancy created by § 17-12-201;

(5) "Certificate" means a certificate as "certified public accountant" issued under § 17-12-301 or a corresponding certificate as "certified public accountant" issued after examination under the laws of any other state;

(6) "Compilation" means providing a service to be performed in accordance with "Statements on Standards for Accounting and Review Services" and presenting in the form of financial statements informa-

tion that is the representation of management and/or owners without undertaking to express any assurance on the financial statements;

(7) "Conviction" means all instances in a criminal case in which a defendant has been found guilty or pleads guilty or nolo contendere regardless of whether:

(A) Sentencing or imposition of sentencing has been deferred or suspended; or

(B) The adjudication of guilt or the sentence is withheld by the court;

(8) "Firm" means a partnership, corporation, limited liability company, sole proprietorship, or other entity required to be registered with the board under the provisions of § 17-12-401 et seq.;

(9) "License" means a certificate issued under § 17-12-301 or a registration under § 17-12-312 or § 17-12-401 et seq. or, in each case, a certificate or permit issued or a registration under corresponding provisions of prior law;

(10) "Licensee" means the holder of a license as defined in this section;

(11) "Member" means either:

(A) The person in whose name membership interests are registered in the records of a limited liability company; or

(B) The beneficial owner of membership interests of a revocable living trust where the membership interests are registered in the records of the limited liability company in the name of the revocable living trust;

(12) "NASBA" means the National Association of State Boards of Accountancy, or its successor;

(13) "PCAOB" means the Public Company Accounting Oversight Board, or its successor;

(14) "Practice of public accounting" means the performance of attest services as defined in this section or the performance of professional services while using the title or designation certified public accountant, public accountant, CPA, PA, accountant, or auditor;

(15) "Professional services" means services arising out of or related to the specialized knowledge or skills performed by certified public accountants or public accountants;

(16) "Shareholder" means either:

(A) The person in whose name shares are registered in the records of a corporation; or

(B) The beneficial owner of shares of a revocable living trust where the shares are registered in the records of the corporation in the name of the revocable living trust; and

(17) "State" means any state, territory, or insular possession of the United States or the District of Columbia.

(b) The statements on standards specified in subdivision (a)(2) of this section shall be:

(1) Adopted by reference by rule of the board; and

(2) Those developed for general application by recognized national accountancy organizations such as the American Institute of Certified Public Accountants.

History. Acts 1975, No. 160, § 22; A.S.A. 1947, § 71-632; Acts 1997, No. 306, § 4; 1999, No. 180, § 1; 2005, No. 54, § 1; 2009, No. 93, § 1.

Amendments. The 2005 amendment added (a)(6) and redesignated the remaining subdivisions accordingly.

The 2009 amendment inserted (a)(2)(D), (a)(6), and (a)(13) and redesignated the remaining subdivisions accordingly; inserted “sole proprietorship” in (a)(8); redesignated (b); and made related and stylistic changes.

17-12-104. Penalty.

(a)(1) Any person who violates any provision of § 17-12-106 shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than five hundred dollars (\$500) or to imprisonment for not more than one (1) year, or to both fine and imprisonment for each violation.

(2) Each violation of § 17-12-106 shall constitute a separate offense.

(b) Whenever the Arkansas State Board of Public Accountancy has reason to believe that any person is subject to punishment under this section, the board may certify the facts to the Attorney General or other appropriate enforcement officer, who, in his or her discretion, may cause appropriate proceedings to be brought.

History. Acts 1975, No. 160, § 19; A.S.A. 1947, § 71-629; Acts 2005, No. 54, § 2.

Amendments. The 2005 amendment inserted the (a)(1) and (b) designations;

inserted “for each violation” at the end of (a)(1); added (a)(2); and substituted “subject to punishment” for “liable for punishment” in (b).

17-12-105. Injunctions.

Whenever in the judgment of the Arkansas State Board of Public Accountancy any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of § 17-12-106, the board may make application to the appropriate court for an order enjoining such acts or practices, and upon a showing by the board that the person has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or such other order as may be appropriate shall be granted by the court without bond.

History. Acts 1975, No. 160, § 18; A.S.A. 1947, § 71-628.

17-12-106. Unlawful acts.

(a)(1) No person shall assume or use the title or designation “certified public accountant” or the abbreviation “CPA” or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that he or she is a certified public accountant, unless he or

she holds a current license as a certified public accountant under § 17-12-301 et seq. and all of his or her offices in this state for the practice of public accounting are currently maintained and registered as required under § 17-12-403.

(2) However, a foreign accountant who has received a certificate under the provisions of § 17-12-308(c) may use the title under which he or she is generally known in his or her country, followed by the name of the country from which he or she received his or her certificate, license, or degree.

(b) No firm shall assume or use the title or designation “certified public accountant” or the abbreviation “CPA” or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is composed of certified public accountants unless the firm is currently registered under § 17-12-401(b)(1) and all offices of the firm in this state for the practice of public accounting are currently maintained and registered as required under § 17-12-403.

(c) No person shall assume or use the title or designation “public accountant” or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that he or she is a public accountant, unless:

(1) He or she is currently licensed as a public accountant and all of the person’s offices in this state for the practice of public accounting are currently maintained and registered as required under § 17-12-403; or

(2) He or she is currently licensed as a certified public accountant under § 17-12-301 et seq. and all of the person’s offices in this state for the practice of public accounting are currently maintained and registered as required under § 17-12-403.

(d) No firm shall assume or use the title or designation “public accountant” or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is composed of public accountants unless the firm is currently registered under § 17-12-401 or § 17-12-402 and all offices of the firm in this state for the practice of public accounting are currently maintained and registered as required under § 17-12-403.

(e)(1) No person or firm shall assume or use the title or designation “certified accountant”, “chartered accountant”, “enrolled accountant”, “licensed accountant”, “registered accountant”, “accredited accountant”, “accounting practitioner”, or any other title or designation likely to be confused with “certified public accountant” or “public accountant”, or any of the abbreviations, “CA”, “LA”, “RA”, “AA”, “AP”, or similar abbreviations likely to be confused with “CPA” or “PA”.

(2) Anyone currently licensed under this chapter and whose offices in this state for the practice of public accounting are currently maintained and registered as required under § 17-12-403 may hold himself or herself out to the public as an “accountant” or “auditor”.

(3) A foreign accountant who receives a certificate under § 17-12-308(c) and all of whose offices in this state for the practice of public accounting are currently maintained and registered as required under

§ 17-12-403 may use the title under which he or she is generally known in his or her country, followed by the name of the country from which he or she received his or her certificate, license, or degree.

(f)(1) A person who is not a current licensee may not offer to render or render any attest service as defined in § 17-12-103.

(2) The restriction in subdivision (f)(1) of this section does not prohibit any act of a public official or public employee in the performance of that person's duties as such or prohibit the performance by any person of other services involving the use of accounting skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements without the issuance of reports in violation of this chapter.

(g) Unless he or she is a current licensee and all of his or her offices in this state for the practice of public accounting are currently maintained and registered under § 17-12-403, no person shall sign or affix his or her name or any trade or assumed name used by him or her in his or her profession or business with any wording indicating that he or she is an accountant or auditor or with any wording indicating that he or she has expert knowledge in accounting or auditing to any opinion or certificate attesting in any way to the reliability of any representation or estimate in regard to any person or organization embracing:

(1) Financial information; or

(2) Facts respecting compliance with conditions established by law or contract, including, but not limited to, statutes, ordinances, regulations, grants, loans, and appropriations.

(h) Unless the firm is currently registered as required by § 17-12-401 et seq. and all of its offices in this state for the practice of public accounting are currently maintained and registered as required under § 17-12-403, no person shall sign or affix a firm name with any wording indicating that it is a partnership, corporation, or limited liability company composed of accountants or auditors or persons having expert knowledge in accounting or auditing to any opinion or certificate attesting in any way to the reliability of any representation or estimate in regard to any person or organization embracing:

(1) Financial information; or

(2) Facts respecting compliance with conditions established by law or contract, including, but not limited to, statutes, ordinances, regulations, grants, loans, and appropriations.

(i)(1) No person not currently licensed pursuant to § 17-12-301 et seq., and no firm not currently registered pursuant to § 17-12-401 et seq., shall hold himself or herself or itself out to the public as an "accountant" or "auditor" by use of either or both of such words on any sign, card, electronic transmission, or letterhead or in any advertisement or directory without indicating thereon or therein that the person or firm does not hold such a license.

(2) This subsection shall not prohibit any officer, employee, partner, or principal of any organization from describing himself or herself by the position, title, or office he or she holds in such an organization, nor

shall this subsection prohibit any act of a public official or public employee in the performance of his or her duties as such.

(j) No person shall assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a partnership, corporation, or limited liability company if there is, in fact, no bona fide partnership, corporation, or limited liability company currently registered under § 17-12-401 or § 17-12-402. A sole proprietor, corporation, or partnership lawfully using the title or designation in conjunction with such names or designations on July 9, 1975, may continue to do so if he or she or it otherwise complies with the provisions of this chapter.

(k)(1)(A) A licensee shall not for a commission recommend or refer to a client a product or service, or for a commission recommend or refer a product or service to be supplied by a client, or receive a commission when the licensee or the licensee's firm also performs for that client:

(i) An audit or review of a financial statement;

(ii) A compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence;

(iii) An examination of prospective financial information; or

(iv) An engagement to be performed in accordance with PCAOB standards.

(B) This prohibition applies during the period in which the licensee is engaged to perform any of the services listed in subdivision (k)(1)(A) of this section and the period covered by any historical financial statements involved in such listed services.

(2) A licensee who is not prohibited by this section from performing services for or receiving a commission and who is paid or expects to be paid a commission shall disclose that fact to a person or entity to whom the licensee recommends or refers a product for service to which the commission relates.

(3) A licensee who accepts a referral fee for recommending or referring any service of a licensee to a person or entity or who pays a referral fee to obtain a client shall disclose the acceptance or payment to the client.

(1)(1) A licensee shall not:

(A) Perform for a contingent fee any professional services for or receive such a fee from a client for whom the licensee or the licensee's firm performs:

(i) An audit or review of a financial statement;

(ii) A compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence;

(iii) An examination of prospective financial information; or

(iv) An engagement to be performed in accordance with PCAOB standards; or

(B) Prepare an original or amended tax return or claim for a tax refund for a contingent fee for a client.

(2) The prohibition in subdivision (1)(1) of this section applies during the period in which the licensee is engaged to perform any of the services listed in subdivision (1)(1) of this section and the period covered by any historical financial statements involved in any such listed services.

(3)(A) Except as stated in subdivision (1)(3)(B) of this section, a contingent fee is a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained or in which the amount of the fee is otherwise dependent upon the finding or result of the service.

(B) Solely for purposes of this section, fees are not regarded as being contingent if fixed by courts or other public authorities or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies.

(C) A licensee's fees may vary depending, for example, on the complexity of services rendered.

(m) A firm that is not registered under § 17-12-401 and does not have an office in this state to provide professional services in this state does not violate this section if the firm complies with § 17-12-401(b)(2) or § 17-12-401(b)(3).

(n) For purposes of this section:

(1) "Licensee" includes an individual using practice privileges under § 17-12-311 on an equal basis; and

(2) A reference to a firm registered under § 17-12-401 et seq. includes a firm exempt from registration and practicing under § 17-12-401(b)(2) — (b)(3).

History. Acts 1975, No. 160, § 16; A.S.A. 1947, § 71-626; Acts 1991, No. 434, § 1; 1997, No. 242, § 1; 1999, No. 180, § 2; 2005, No. 54, § 3; 2009, No. 93, §§ 2-6.

Publisher's Notes. Acts 1975, No. 160, as amended, exempted the following persons from the certification requirements of subchapter 3 of this chapter if they registered as public accountants prior to October 9, 1975: Any persons who: (1) were residents of Arkansas, or had a place of business therein; and (2) were of good moral character; and (3) either: (A) held themselves out to the public as public accountants and were engaged as principals, as distinguished from employees, on July 1, 1974, in the practice of public accounting as their principal occupation; or (B) were serving in the armed forces of the United States of America on July 1, 1975, and, immediately prior to entering such service, held themselves out to the

public as public accountants and were engaged as principals, as distinguished from employees, in the practice of public accounting as their principal occupation for one year. In the latter case, the time for registration was extended for a period of six months from the time the person was separated from active duty.

Persons so registered, and holding a permit under §§ 17-12-501 — 17-12-506 were to be known as "public accountants" and were to pay a registration fee not to exceed \$50.00.

Acts 1983, No. 170, extended the registration deadline to August 16, 1983, for registrants who met the education qualifications and other qualifications for registration as a public accountant prescribed by Acts 1975, No. 160, as amended.

Acts 1985, No. 117, eliminated the registration deadline entirely.

Amendments. The 2005 amendment

inserted the subdivision designations in (a), (c) and (e) and made related changes; substituted "holds a current license" for "has received a certificate" in (a)(1); substituted "The person holds a current license" for "unless the person has received a certificate" in (c)(2); substituted "Anyone currently licensed under this chapter and" for "However, anyone" in (e)(2); substituted "A person who is not a current licensee may not" for "No person who is not a licensee may" in (f)(1); substituted

"current licensee" for "licensee" in (g); substituted "the service" for "such a service" at the end of (l)(3)(A); and inserted "currently" throughout the section.

The 2009 amendment substituted "§ 17-12-401(a)(1)" for "§ 17-12-401" in (b); substituted "not currently registered" for "not currently licensed" in (i)(1); inserted (k)(1)(A)(iv) and made related and minor stylistic changes; inserted (l)(1)(A)(iv); and added (m) and (n).

17-12-107. Permissible acts.

(a) Nothing contained in this chapter shall prohibit any person not a certified public accountant or public accountant from serving as an employee of, or an assistant to, a certified public accountant or public accountant licensed under § 17-12-301 et seq., a firm registered under § 17-12-401 et seq., or a foreign accountant who received a certificate under § 17-12-308(c), provided that the employee or assistant shall not issue any accounting or financial statement over his or her name.

(b) Nothing contained in this chapter shall prohibit any person who is not a licensee from issuing any compilation report prescribed by the "Statements on Standards for Accounting and Review Services" on any services to which those standards apply, indicating that the services were performed in accordance with standards established by the American Institute of Certified Public Accountants, provided that the report discloses that the person does not hold a license. The Arkansas State Board of Public Accountancy may by rule prescribe safe harbor language on the content of such disclosure.

History. Acts 1975, No. 160, § 17; A.S.A. 1947, § 71-627; Acts 1999, No. 180, § 3.

Publisher's Notes. For reference to public accountants, see Publisher's Notes to § 17-12-106.

17-12-108. CPA construed.

Whenever any statute or regulation requires that reports, financial statements, and other documents for submission to any department, board, or agency of this state be prepared by CPAs, the requirements shall be construed to mean registered public accountants or certified public accountants.

History. Acts 1975, No. 160, § 5; 1977, No. 183, § 1; 1979, No. 432, § 3; A.S.A. 1947, § 71-615.

Publisher's Notes. For reference to public accountants, see Publisher's Notes to § 17-12-106.

17-12-109. Accountants' working papers.

(a) All statements, records, schedules, working papers, and memoranda made by a certified public accountant or public accountant incident to or in the course of professional service to clients by the

accountant, except reports submitted by a certified public accountant or public accountant to a client, shall be and remain the property of the accountant in the absence of an express agreement between the accountant and the client to the contrary.

(b) No statement, record, schedule, working paper, or memorandum shall be sold, transferred, or bequeathed without the consent of the client or his or her personal representative or assignee to anyone other than one (1) or more surviving partners or new partners of the accountant or to his or her corporation or limited liability company.

(c) Each licensee shall retain working papers for a period of time specified by the Arkansas State Board of Public Accountancy.

History. Acts 1975, No. 160, § 21; A.S.A. 1947, § 71-631; Acts 1999, No. 180, § 4; 2005, No. 54, § 4.

Publisher's Notes. For reference to

public accountants, see Publisher's Notes to § 17-12-106.

Amendments. The 2005 amendment added (c).

17-12-110. [Repealed.]

Publisher's Notes. This section, concerning corporations, was repealed by Acts 1999, No. 180, § 5. The section was

derived from Acts 1975, No. 160, § 7; 1979, No. 432, § 4; A.S.A. 1947, § 71-617.

17-12-111. Evidence.

The display or uttering by a person of a card, sign, advertisement, or other printed, engraved, electronic transmission, or written instrument or device bearing a person's name in conjunction with the words "certified public accountant" or any abbreviation thereof, or "public accountant" or any abbreviation thereof, shall be prima facie evidence in any action brought under § 17-12-104 or § 17-12-105 that the person whose name is so displayed caused or procured the display or uttering of such a card, sign, advertisement, or other printed, engraved, electronic transmission, or written instrument or device and that the person is holding himself or herself out to be a certified public accountant or a public accountant. In any such action, evidence of the commission of a single act prohibited by this chapter shall be sufficient to justify an injunction or a conviction without evidence of a general course of conduct.

History. Acts 1975, No. 160, § 20; A.S.A. 1947, § 71-630; Acts 1999, No. 180, § 6.

Publisher's Notes. For reference to public accountants, see Publisher's Notes to § 17-12-106.

17-12-112. [Repealed.]

Publisher's Notes. This section, concerning organization of a limited liability company, was repealed by Acts 1999, No.

180, § 7. The section was derived from Acts 1997, No. 242, § 2.

SUBCHAPTER 2 — ARKANSAS STATE BOARD OF PUBLIC ACCOUNTANCY

SECTION.

- 17-12-201. Creation — Members.
 17-12-202. Officers and proceedings.
 17-12-203. Duties and powers.

SECTION.

- 17-12-204. Disposition of funds — Reports.

Cross References. Liability of committee members of professional societies, § 17-1-102.

Effective Dates. Acts 1975, No. 160, § 25: July 1, 1975.

Acts 1979, No. 432, § 10: Mar. 20, 1979. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that in order to properly define, describe and classify all revenues and other income which are required to be deposited in the State Treasury, it is necessary that the provisions of this act become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in full force from and after its passage and approval."

Acts 1981, No. 717, § 3: Mar. 25, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that regulatory boards and commissions covered by Acts 1977, No. 113 exist for the singular purpose of protecting the public health and welfare; that it is necessary and proper that the public be represented on such boards and commissions; that the operations of such boards and commissions have a profound effect on the daily lives of all Arkansans; and that the public's voice should not be muted on any question coming before such public bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 131, § 6 and No. 135, § 6: Feb. 10, 1983. Emergency clauses provided: "It is hereby found and determined by the General Assembly that state

boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as to questions coming before such bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 180, § 41: Jan. 1, 2000.

17-12-201. Creation — Members.

(a) There is created the Arkansas State Board of Public Accountancy.

(b)(1) The board shall consist of seven (7) members, appointed by the Governor for terms of five (5) years.

(2) Four (4) members of the board shall be residents of this state who are certified public accountants. One (1) member shall be a resident public accountant licensed under this chapter during the years there are at least twenty percent (20%) of the original registrants under this chapter reregistered or relicensed. Thereafter, the vacancy shall be filled by a resident who is a certified public accountant.

(3) Two (2) members of the board shall be residents of this state and shall not be actively engaged in or retired from the profession of accounting. One (1) member shall represent consumers, and one (1) member shall be sixty (60) years of age or older and shall represent the elderly. Both shall be appointed from the state at large subject to confirmation by the Senate. The two (2) positions may not be held by the same person. Both shall be full voting members but shall not participate in the grading of examinations.

(c)(1) Vacancies occurring during a term shall be filled by appointment for the unexpired term.

(2) Upon the expiration of the term of office, a member shall continue to serve until his or her successor shall have been appointed and shall have qualified.

(3) The Governor shall remove from the board any professional member whose license has become void or has been revoked or suspended and, after hearing, may remove any member of the board for neglect of duty or other just cause.

(4) No person who has served a full term on the board shall be eligible for reappointment until after the lapse of five (5) years.

(5) Appointment to fill an unexpired term is not to be considered a complete term.

(d) Each member of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1975, No. 160, § 2; 1977, No. 113, §§ 1-3; 1981, No. 717, § 2; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-617 — 6-619, 6-623 — 6-626, 71-612; Acts 1997, No. 250, § 122; 1999, No. 180, §§ 8, 9.

Publisher's Notes. Acts 1975, No. 160, as amended, exempted the following persons from the certification requirements of subchapter 3 of this chapter if they registered as public accountants prior to October 9, 1975: Any persons who: (1) were residents of Arkansas, or had a place of business therein; (2) were of good moral character; and (3) either: (A) held themselves out to the public as public accountants and were engaged as principals, as

distinguished from employees, on July 1, 1974, in the practice of public accounting as their principal occupation; or (B) were serving in the armed forces of the United States of America on July 1, 1975, and, immediately prior to entering such service, held themselves out to the public as public accountants and were engaged as principals, as distinguished from employees, in the practice of public accounting as their principal occupation for one year. In the latter case, the time for registration was extended for a period of six months from the time the person was separated from active duty.

Persons so registered, and holding a permit under §§ 17-12-501 — 17-12-506

were to be known as "public accountants" and were to pay a registration fee not to exceed \$50.00.

Acts 1981, No. 717, § 1, provided that the purpose of the act was to provide consumer representatives on state boards and commissions affected by Acts 1977, No. 113 full voting authority as board members.

Acts 1983, No. 170, extended the registration deadline to August 16, 1983, for registrants who met the education quali-

fications and other qualifications for registration as a public accountant prescribed by Acts 1975, No. 160, as amended.

Acts 1985, No. 117, eliminated the registration deadline entirely.

The terms of the members of the Arkansas State Board of Public Accountancy, other than the representatives of consumers and the elderly, are arranged so that one term expires every year.

CASE NOTES

Cited: Clinton v. Clinton, 305 Ark. 585, 810 S.W.2d 923 (1991).

17-12-202. Officers and proceedings.

(a) The Arkansas State Board of Public Accountancy shall elect annually a president, a secretary, and a treasurer from its members.

(b) A majority of the board shall constitute a quorum for the transaction of business.

(c) The board shall have a seal which shall be judicially noticed. The board shall keep records of its proceedings. In any proceeding in court, civil or criminal, arising out of or founded upon any provision of this chapter, copies of the records certified as correct under the seal of the board shall be admissible in evidence as tending to prove the content of the records.

History. Acts 1975, No. 160, § 2; A.S.A. 1947, § 71-612.

17-12-203. Duties and powers.

(a) The Arkansas State Board of Public Accountancy may adopt, and amend from time to time, regulations for the orderly conduct of its affairs and for the administration of this chapter.

(b)(1) The board shall prepare periodically and make available in media or a medium deemed appropriate by the board a register which shall contain:

(A) The names of all practitioners currently licensed to practice under this chapter;

(B) The names of the members of the board; and

(C) Any other matters as may be deemed proper by the board.

(2) The board may employ personnel and arrange for assistance as it may require for the performance of its duties.

(c)(1) The board may promulgate and amend rules of professional conduct appropriate to establish and maintain a high standard of integrity and dignity in the profession of public accountancy.

(2) At least three (3) months prior to the promulgation of a rule or amendment to its rules of professional conduct, the board shall mail copies of the proposed rule or amendment to each licensee with a notice advising him or her of the proposed effective date of the rule or amendment and requesting that he or she submit his or her comments thereon at least fifteen (15) days prior to its effective date.

(3) Comments shall be advisory only.

(4) Failure to mail the rule, amendment, or notice to all licensees shall not affect the validity of the rule or amendment.

(d) The board may issue any further regulations, including, but not limited to, rules of professional conduct pertaining to licensees practicing public accounting which it deems consistent with or required by the public welfare. Among other things, the board may prescribe regulations for licensees:

(1) Governing their style, name, and title;

(2) Governing their affiliation with any other organization; and

(3) Establishing reasonable standards with respect to professional liability insurance and capital requirements.

History. Acts 1975, No. 160, § 2; 1979, No. 432, § 1; A.S.A. 1947, § 71-612; Acts 1997, No. 242, § 3; 1999, No. 180, § 10; 2005, No. 54, § 5.

Amendments. The 2005 amendment substituted “prepare periodically and make available in a media or a medium deemed appropriate by the board a register which shall contain the names of all practitioners currently licensed to practice” for “have printed and published for

public distribution a biennial register which shall contain the names, arranged alphabetically by classifications, of all practitioners licensed” in (b)(1); deleted “copies of the registers shall be mailed to each licensee” at the end of (b)(1)(C); inserted the subdivision designations in (c); inserted “to its rules of professional conduct” in (c)(2); and made minor stylistic changes.

17-12-204. Disposition of funds — Reports.

(a) All fees and other moneys received by the Arkansas State Board of Public Accountancy pursuant to the provisions of this chapter shall be kept in a separate fund and expended solely for the purposes of this chapter. No part of this special fund shall revert to the general funds of this state. The compensation provided by this chapter and all expenses incurred under this chapter shall be paid from this special fund. No compensation or expenses incurred under this chapter shall be a charge against the general funds of this state.

(b) The board shall file an annual report of its activities with the Governor, and the report shall include a statement of all receipts and disbursements.

History. Acts 1975, No. 160, § 2; 1979, No. 432, § 1; A.S.A. 1947, § 71-612.

SUBCHAPTER 3 — INITIAL LICENSURE

SECTION.

- 17-12-301. Requirements generally.
- 17-12-302. Education requirements.
- 17-12-303. Criminal background check.
- 17-12-304. Examination — Times — Resource assistance.
- 17-12-305. Reexaminations.
- 17-12-306. Examination fees.
- 17-12-307. Credit for examination administered by licensing authority in another jurisdiction.

SECTION.

- 17-12-308. Reciprocity.
- 17-12-309. Experience.
- 17-12-310. Certificates held under prior law.
- 17-12-311. Substantial equivalency.
- 17-12-312. Licensing of public accountants.
- 17-12-313. Time for initial license.

Effective Dates. Acts 1975, No. 160, § 25: July 1, 1975.

Acts 1979, No. 432, § 10: Mar. 20, 1979. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that in order to properly define, describe and classify all revenues and other income which are required to be deposited in the

State Treasury, it is necessary that the provisions of this act become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in full force from and after its passage and approval."

Acts 1999, No. 180, § 41: Jan. 1, 2000.

17-12-301. Requirements generally.

(a) A certificate as a certified public accountant shall be granted by the Arkansas State Board of Public Accountancy to any person of good moral character:

(1) Who has met the education and experience requirements set forth in this chapter and by the board; and

(2) Who has passed an examination in accounting and auditing and such related subjects as the board shall determine to be appropriate.

(b)(1)(A) "Good moral character" as used in this section means lack of a history of:

(i) Dishonest or felonious acts; or

(ii) Conduct involving fraud or moral turpitude.

(B) The board may refuse to grant a certificate on the ground of failure to satisfy this requirement only if there is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a licensee and if the finding by the board of lack of good moral character is supported by clear and convincing evidence.

(2) When an applicant is found to be unqualified for a certificate because of a lack of good moral character, the board shall furnish the applicant a:

(A) Statement containing the findings of the board;

(B) Complete record of the evidence upon which the determination was based; and

(C) Notice of the applicant's right of appeal.

(c)(1) Any person who has received from the board a certificate as a certified public accountant which is currently in full force and effect shall be styled and known as a "certified public accountant" and may also use the abbreviation "CPA".

(2) The board shall maintain a list of certified public accountants. Any certified public accountant may also be known as a public accountant.

History. Acts 1975, No. 160, §§ 3, 3A; 1979, No. 432, § 2; A.S.A. 1947, § 71-613; Acts 1989, No. 696, § 1; 1997, No. 242, § 4; 1999, No. 180, § 12; 2005, No. 54, § 6.

Publisher's Notes. Acts 1975, No. 160, as amended, exempted the following persons from the certification requirements of this subchapter if they registered as public accountants prior to October 9, 1975: Any persons who: (1) were residents of Arkansas, or had a place of business therein; (2) were of good moral character; and (3) either: (A) held themselves out to the public as public accountants and were engaged as principals, as distinguished from employees, on July 1, 1974, in the practice of public accounting as their principal occupation; or (B) were serving in the armed forces of the United States of America on July 1, 1975, and, immediately prior to entering such service, held themselves out to the public as public accountants and were engaged as principals, as distinguished from employees, in

the practice of public accounting as their principal occupation for one year. In the latter case, the time for registration was extended for a period of six months from the time the person was separated from active duty.

Persons so registered, and holding a permit under §§ 17-12-501 — 17-12-506 were to be known as "public accountants" and were to pay a registration fee not to exceed \$50.00.

Acts 1983, No. 170, extended the registration deadline to August 16, 1983, for registrants who met the education qualifications and other qualifications for registration as a public accountant prescribed by Acts 1975, No. 160, as amended.

Acts 1985, No. 117, eliminated the registration deadline entirely.

Amendments. The 2005 amendment inserted the subdivision designations in (b)(1) and made related changes; inserted (b)(1)(ii); and inserted "currently" preceding "in full force" in (c)(1).

17-12-302. Education requirements.

(a) In general, the applicable education requirements shall be those in effect on the date on which the applicant successfully applies for his or her examination under § 17-12-301(a)(2). However, the Arkansas State Board of Public Accountancy may provide by regulation for exceptions to the general rule in order to prevent what it determines to be undue hardship to applicants resulting from changes in the education and experience requirements.

(b) The board may provide by regulation for the general scope of the examinations and may obtain any advice and assistance it deems appropriate to assist it in preparing and grading the examinations.

History. Acts 1975, No. 160, § 3; 1979, No. 432, § 2; A.S.A. 1947, § 71-613; Acts 1989, No. 696, § 2; 1999, No. 180, § 13.

17-12-303. Criminal background check.

(a) The Arkansas State Board of Public Accountancy may require each applicant for a new or reinstated license as a certified public accountant, including reciprocity applicants, or public accountant to apply for or authorize the board to obtain state and national criminal background checks to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(b) The criminal background checks shall conform to the applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall authorize the release of the criminal background checks to the board and shall be responsible for the payment of any fee associated with the criminal background checks.

(d) Upon completion of the criminal background checks, the Identification Bureau of the Department of Arkansas State Police shall forward to the board all information obtained concerning the commission by the applicant of any offense listed in subsection (e) of this section.

(e) Notwithstanding the provisions of § 17-12-301, a person convicted of a felony or crime involving moral turpitude or dishonesty in any state or federal court may not receive or hold a license as a certified public accountant or public accountant.

(f)(1) The provisions of subsection (e) of this section may be waived by the board upon the request of:

(A) An affected applicant for licensure or registration; or

(B) The person holding a license or registration subject to revocation.

(2) Circumstances for which a waiver may be granted shall include, but not be limited to:

(A) The age at which the crime was committed;

(B) The circumstances surrounding the crime;

(C) The length of time since the crime;

(D) Subsequent work history;

(E) Employment references;

(F) Character references;

(G) A conviction or record that has been expunged; and

(H) Other evidence demonstrating that the applicant does not pose a threat to the public health, safety, or welfare.

(g)(1) Any information received by the board from the Identification Bureau of the Department of Arkansas State Police under this section is not available for examination except by:

(A) The affected applicant or the applicant's authorized representative; or

(B) The person whose license or registration is subject to revocation or his or her authorized representative.

(2) No record, file, or document shall be removed from the custody of the Department of Arkansas State Police.

(3) Only information pertaining to the person making the request may be made available to the affected applicant or the person whose license or registration is subject to revocation.

(4) Rights of privilege and confidentiality established in this section shall not extend to any document created for purposes other than the criminal background checks.

(h) The board shall adopt rules and regulations to implement the provisions of this section.

History. Acts 1975, No. 160, § 3; 1979, No. 432, § 2; A.S.A. 1947, § 71-613; Acts 1993, No. 1219, § 1; 1999, No. 180, § 14; 2005, No. 54, § 7.

Amendments. The 2005 amendment rewrote this section.

17-12-304. Examination — Times — Resource assistance.

(a) The examination required by § 17-12-301(a)(2) shall be held by the Arkansas State Board of Public Accountancy and shall take place as often as the board shall determine to be desirable. However, the examination required by § 17-12-301(a)(2) shall be held not less frequently than one (1) time each year.

(b) The board may make use of all or any part of the Certified Public Accountant's Examination and Advisory Grading Services as it deems appropriate to assist it in performing its duties under this section.

History. Acts 1975, No. 160, § 3; 1979, No. 432, § 2; A.S.A. 1947, § 71-613; Acts 1989, No. 696, § 3; 2005, No. 54, § 8.

Amendments. The 2005 amendment deleted "Uniform" preceding "Certified" in (b).

17-12-305. Reexaminations.

(a) The Arkansas State Board of Public Accountancy may by regulation prescribe the terms and conditions under which an applicant who passes the examination in one (1) or more of the subjects indicated in § 17-12-301(a)(2) may be reexamined in only the remaining subjects, with credit for the subjects previously passed.

(b) It may also provide by regulation for a reasonable waiting period for an applicant's reexamination in a subject he or she has failed.

(c) Subject to subsections (a) and (b) of this section and such regulations as the board may adopt governing reexaminations, an applicant shall be entitled to any number of reexaminations under § 17-12-301(a)(2).

History. Acts 1975, No. 160, § 3; 1979, No. 432, § 2; A.S.A. 1947, § 71-613; Acts 1999, No. 180, § 15.

17-12-306. Examination fees.

(a) The Arkansas State Board of Public Accountancy shall charge a fee to each applicant applying to sit for the examination. In the board's

discretion, the fee for a first-time applicant may be greater than the fee charged for reexamination.

(b) The board shall also charge a fee to each applicant for the administration of the examination. The board may in its discretion contract with a third party to assist in the administration of the examination. In such an event, the fee charged by the third party may be charged to and paid by the applicant.

(c) The fees to be paid by each applicant pursuant to this section shall be determined by the board, taking into account the approximate cost of processing the applications and administering the examination. In setting the fees, the board may also take into account additional costs to comply with the Americans with Disabilities Act and may establish a reserve for such purposes.

(d) The applicable fees payable pursuant to this section shall be paid by the applicant at the time he or she applies for examination or reexamination.

History. Acts 1975, No. 160, § 3; 1979, No. 432, § 2; A.S.A. 1947, § 71-613; Acts 1997, No. 242, § 5; 1999, No. 180, § 16.

abilities Act, referred to in this section, is codified primarily as 42 U.S.C. § 12101 et seq.

U.S. Code. The Americans with Dis-

17-12-307. Credit for examination administered by licensing authority in another jurisdiction.

The Arkansas State Board of Public Accountancy may by regulation provide for granting a credit to an applicant for his or her satisfactory completion of an examination in any one (1) or more of the subjects specified in § 17-12-301(a)(2) given by the licensing authority in any other state. The regulations shall include such requirements as the board shall determine to be appropriate in order that any examination approved as a basis for any credit shall be, in the judgment of the board, at least as thorough as the most recent examination given by the board at the time of the granting of the credit.

History. Acts 1975, No. 160, § 3; 1979, No. 432, § 2; A.S.A. 1947, § 71-613; Acts 1997, No. 242, § 6; 1999, No. 180, § 17; 2005, No. 54, § 9.

Amendments. The 2005 amendment substituted “her satisfactory” for “hersatisfactory.”

17-12-308. Reciprocity.

(a) With regard to applicants that do not qualify for reciprocity under the substantial equivalency standard set out in § 17-12-311, the Arkansas State Board of Public Accountancy shall issue a certificate as a certified public accountant to a holder of a certificate, license, or permit issued by another state upon a showing that:

(1) The applicant passed the examination required for issuance of the applicant’s certificate with grades that would have been passing grades at the time in this state;

(2) The applicant:

(A) Meets all current requirements in this state for issuance of a certificate at the time application is made;

(B) At the time of the issuance of the applicant's certificate, license, or permit in the other state met all such requirements then applicable in this state; or

(C) Had four (4) years of experience outside of this state in the practice of public accounting or meets equivalent requirements prescribed by the board by rule after passing the examination upon which the applicant's certificate was based and within the ten (10) years immediately preceding the application;

(3) The applicant has had experience in the practice of public accounting meeting the requirements of § 17-12-309; and

(4) The applicant has fulfilled the continuing education requirements applicable under § 17-12-502.

(b) As an alternative to the requirements of § 17-12-308(a), a certificate holder licensed by another state who establishes his or her principal place of business in this state shall request the issuance of a certificate from the board prior to establishing such a principal place of business. The board shall issue a certificate to such a person who obtains from the NASBA National Qualification Appraisal Service verification that the individual's CPA qualifications are substantially equivalent to the CPA licensure requirements of the AICPA/NASBA Uniform Accountancy Act.

(c) The board shall issue a certificate to a holder of a substantially equivalent foreign designation, provided that:

(1) The foreign authority which granted the designation makes similar provision to allow a person who holds a valid certificate issued by this state to obtain the foreign authority's comparable designation; and

(2) The foreign designation:

(A) Was duly issued by a foreign authority that regulates the practice of public accountancy and the foreign designation has not expired or been revoked or suspended;

(B) Entitles the holder to issue reports upon financial statements; and

(C) Was issued upon the basis of education, examination, and experience requirements established by the foreign authority or by law; and

(3) The applicant:

(A) Received the designation, based on education and examination standards substantially equivalent to those in effect in this state, at the time the foreign designation was granted;

(B) Completed an experience requirement substantially equivalent to the requirement set out in § 17-12-309 in the jurisdiction which granted the foreign designation or has completed four (4) years of professional experience in this state or meets equivalent requirements prescribed by the board by rule, within the ten (10) years immediately preceding the application; and

(C) Passed a uniform qualifying examination in national standards acceptable to the board.

(d) An applicant under subsection (c) of this section shall in the application list all jurisdictions, foreign and domestic, in which the applicant has applied for or holds a designation to practice public accountancy, and each holder of a certificate issued under this subsection shall notify the board in writing, within thirty (30) days after its occurrence, of any issuance, denial, revocation, or suspension of a designation or commencement of a disciplinary or enforcement action by any jurisdiction.

History. Acts 1975, No. 160, §§ 3, 3A; Acts 1997, No. 242, § 7; 1999, No. 180, 1979, No. 432, § 2; A.S.A. 1947, § 71-613; § 18.

17-12-309. Experience.

(a) An applicant for initial issuance of a certificate under this subchapter shall show that the applicant has had one (1) year of experience.

(b) The experience shall include providing any type of service or advice involving the use of accounting, attest, management advisory, financial advisory, tax, or consulting skills all of which were verified by a licensee, meeting requirements prescribed by the Arkansas State Board of Public Accountancy by rule.

(c) The experience will be acceptable if it was gained through employment in government, industry, academia, or public practice.

History. Acts 1975, No. 160, § 4; A.S.A. 1947, § 71-614; Acts 1991, No. 434, § 2; 1997, No. 242, § 8; 1999, No. 180, § 19; 2005, No. 54, § 10. **Amendments.** The 2005 amendment inserted the subsection (a)-(c) designations; and substituted "The" for "This" at the beginning of (b) and (c).

17-12-310. Certificates held under prior law.

Persons who on July 9, 1975, held certified public accountant certificates theretofore issued under the laws of this state shall not be required to obtain additional certificates under this chapter, but shall otherwise be subject to all provisions of this chapter. The certificates theretofore issued shall for all purposes be considered certificates issued under this chapter and subject to the provisions hereof.

History. Acts 1975, No. 160, § 3; 1979, No. 432, § 2; A.S.A. 1947, § 71-613.

17-12-311. Substantial equivalency.

(a)(1) An individual whose principal place of business is not in this state and who holds a valid license as a certified public accountant from a state which the NASBA National Qualification Appraisal Service has verified to be in substantial equivalence with the CPA licensure requirements of the AICPA/NASBA Uniform Accountancy Act:

(A) Shall be presumed to have qualifications substantially equivalent to this state's requirements;

(B) Shall have all the privileges of licensees of this state without the need to obtain a certificate under § 17-12-301 or § 17-12-308 or a license under § 17-12-313 or § 17-12-501; and

(C) May offer or render professional services in person, by mail, by telephone, or by electronic means without notifying the Arkansas State Board of Public Accountancy or paying a fee.

(2)(A) An individual whose principal place of business is not in this state and who holds a valid license as a certified public accountant from a state which the NASBA National Qualification Appraisal Service has not verified to be in substantial equivalence with the CPA licensure requirements of the AICPA/NASBA Uniform Accountancy Act:

(i) Shall be presumed to have qualifications substantially equivalent to the requirements of this state;

(ii) Shall have all the privileges of licensees of this state without the need to obtain a certificate under § 17-12-301 or § 17-12-308 or a license under § 17-12-313 or § 17-12-501 if the individual obtains from the NASBA National Qualification Appraisal Service verification that the individual's CPA qualifications are substantially equivalent to the CPA licensure requirements of the AICPA/NASBA Uniform Accountancy Act; and

(iii) May offer or render professional services, whether in person, by mail, by telephone, or by electronic means without notifying the board or paying a fee.

(B) An individual who passed the Uniform CPA Examination and holds a valid license issued by any other state prior to January 1, 2012, may be exempt from the education requirement in § 17-12-302 for purposes of this subdivision (a)(2).

(3) An individual licensee of another state exercising the privilege afforded under this section and the firm that employs that individual licensee consent and agree, as a condition of the exercise of this privilege to:

(A) The personal and subject matter jurisdiction and disciplinary authority of the board;

(B) Comply with this chapter and the board's rules;

(C) Cease offering or rendering professional services in this state individually and on behalf of a firm if the license from the state of the individual's principal place of business is no longer valid; and

(D) The appointment of the board that issued his or her license as his or her agent upon whom process may be served in an action or proceeding by the board against the licensee.

(4) An individual who qualifies for practice privileges under this section may perform the following services for a client with its home office in this state only through a firm that has registered under § 17-12-401:

(A) A financial statement audit or other engagement to be performed in accordance with the "Statements on Auditing Standards";

(B) An examination of prospective financial information to be performed in accordance with “Statements on Standards for Attestation Engagements”; or

(C) An engagement to be performed in accordance with PCAOB standards.

(b) A licensee of this state offering or rendering services or using his or her CPA title in another state shall be subject to disciplinary action in this state for an act committed in another state for which the licensee would be subject to discipline for an act committed in the other state.

(c) The board may investigate any complaint made by the board of accountancy of another state.

History. Acts 1999, No. 180, § 20; **Amendments.** The 2009 amendment 2009, No. 93, § 7. rewrote the section.

17-12-312. Licensing of public accountants.

Any person who qualified to register as a public accountant on July 1, 1975, may at any time register with the Arkansas State Board of Public Accountancy to be licensed as a public accountant.

History. Acts 1999, No. 180, § 21.

17-12-313. Time for initial license.

An applicant shall obtain an initial license within three (3) years of successful completion of the examination under this subchapter or shall be considered as having a void license under § 17-12-504(h).

History. Acts 2005, No. 54, § 11.

SUBCHAPTER 4 — REGISTRATION OF FIRMS

SECTION.	SECTION.
17-12-401. Professional partnerships, corporations, limited liability companies, and sole proprietorships of certified public accountants.	ability companies of public accountants.
17-12-402. Professional partnerships, corporations, sole proprietorships, and limited li-	17-12-403. Offices.
	17-12-404. Licensees associated with un-registered firms.
	17-12-405. [Repealed.]
	17-12-406. [Repealed.]

Effective Dates. Acts 1975, No. 160, § 25: July 1, 1975. Acts 1999, No. 180, § 41: Jan. 1, 2000.

17-12-401. Professional partnerships, corporations, limited liability companies, and sole proprietorships of certified public accountants.

(a) The Arkansas State Board of Public Accountancy shall grant or renew a registration as a CPA firm to an applicant that meets the qualifications of this section.

(b)(1) A firm shall hold a registration under this section if the firm:

(A) Has an office in this state:

(i) Engaged in the practice of public accounting; or

(ii) That uses the title "CPA" or "CPA firm"; or

(B) Does not have an office in this state but performs attest services described in § 17-12-103(a)(2)(A), § 17-12-103(a)(2)(C), or § 17-12-103(a)(2)(D) for a client having its home office in this state.

(2) A firm that does not have an office in this state may perform services under § 17-12-103(a)(2)(B) or § 17-12-103(a)(6) for a client having its home office in this state and may use the title "CPA" or "CPA firm" without registering under this section only if the firm:

(A) Meets the applicable qualifications of this section and § 17-12-507; and

(B) Performs the services through an individual with practice privileges under § 17-12-311.

(3) A firm that is not subject to the requirements of subdivision (b)(1)(B) or (b)(2) of this section may perform other professional services while using the title "CPA" or "CPA firm" in this state without registering under this section only if the firm:

(A) Performs the services through an individual with practice privileges under § 17-12-311; and

(B) Can lawfully perform the services in the state where the individuals with practice privileges have their principal place of business.

(c) If required to register under subdivision (b)(1)(A) of this section:

(1) A partnership engaged in this state in the practice of public accounting shall register with the Arkansas State Board of Public Accountancy as a partnership of certified public accountants and meet the following requirements:

(A) At least one (1) general partner shall be a certified public accountant of this state in good standing; and

(B) Each resident manager in charge of an office of the partnership in this state shall be a certified public accountant of this state in good standing;

(2) A corporation engaged in this state in the practice of public accounting shall register with the board as a corporation of certified public accountants and meet the following requirements:

(A) Any officer or director of the corporation having authority over the practice of public accounting by the corporation in this state shall be a certified public accountant of some state in good standing;

(B) At least one (1) shareholder of the corporation shall be a certified public accountant of this state in good standing;

(C) Each resident manager in charge of an office of the corporation in this state shall be a certified public accountant of this state in good standing; and

(D) The corporation shall be in compliance with other regulations pertaining to corporations practicing public accounting in this state that the board may prescribe;

(3) A limited liability company engaged in this state in the practice of public accounting shall register with the board as a limited liability company of certified public accountants and meet the following requirements:

(A) Any manager, member, officer, or director of the limited liability company having authority over the practice of public accounting by the limited liability company in this state shall be a certified public accountant of some state in good standing;

(B) At least one (1) member of the limited liability company shall be a certified public accountant of this state in good standing;

(C) Each resident manager in charge of an office of the limited liability company in this state shall be a certified public accountant of this state in good standing; and

(D) The limited liability company shall be in compliance with other regulations pertaining to limited liability companies practicing public accounting in this state that the board may prescribe; and

(4) A certified public accountant operating as a sole proprietorship and engaged in this state in the practice of public accounting shall register with the board as a sole proprietor if registration is required under subdivision (b)(1) of this section and shall comply with the requirements of § 17-12-403.

(d)(1) Application for registration shall be made upon the affidavit of a general partner, shareholder, or member who is a certified public accountant of this state in good standing or, if registration is required under subdivision (b)(1)(B) of this section, a licensee of another state who meets the requirements set forth in § 17-12-311.

(2) An individual who has practice privileges under § 17-12-311 and performs services for which registration is required under § 17-12-311(a)(4) shall not be required to obtain a license from this state under § 17-12-301.

(e) The board shall in each case determine whether the applicant is eligible for registration.

(f) Notification shall be given to the board within one (1) month after the admission or withdrawal of a partner, shareholder, or member from any firm so registered.

(g) Any firm registered under this section may include nonlicensee owners or public accountants who hold a valid license under § 17-12-312, provided that:

(1) A majority of the ownership of the firm in terms of financial interests and voting rights of all partners, officers, directors, shareholders, members, or managers belongs to holders of certificates who are licensed in some state, and such partners, officers, directors, sharehold-

ers, members, or managers whose principal place of business is in this state and who perform professional services in this state hold a valid certificate issued under § 17-12-301 et seq. or the corresponding provisions of prior law;

(2) The firm designates a licensee of this state or, in the case of a firm that must be registered under subdivision (b)(1)(B) of this section, a licensee of another state who meets the requirements of § 17-12-311 who is responsible for the proper registration of the firm and identifies that individual to the board;

(3) All nonlicensee owners are active individual participants in the firm or other entities affiliated with the firm; and

(4) The firm complies with such other requirements as the board may impose by rule.

History. Acts 1975, No. 160, § 8; A.S.A. 1947, § 71-618; Acts 1997, No. 242, § 9; 1999, No. 180, § 23; 2005, No. 54, § 12; 2009, No. 93, § 8.

Amendments. The 2005 amendment added (i).

The 2009 amendment rewrote the section.

17-12-402. Professional partnerships, corporations, sole proprietorships, and limited liability companies of public accountants.

(a) A partnership engaged in this state in the practice of public accounting shall register with the Arkansas State Board of Public Accountancy as a partnership of public accountants, provided it meets the following requirements:

(1) At least one (1) general partner shall be a certified public accountant or a public accountant of this state in good standing; and

(2) Each resident manager in charge of an office of the partnership in this state shall be a certified public accountant or a public accountant of this state in good standing.

(b) A corporation engaged in this state in the practice of public accounting shall register with the board as a corporation of public accountants, provided it meets the following requirements:

(1) An officer or director of the corporation having authority over the practice of public accounting by the corporation shall be a certified public accountant or a public accountant of this state in good standing;

(2) Each resident manager in charge of an office of the corporation in this state shall be a certified public accountant or a public accountant of this state in good standing; and

(3) The corporation shall be in compliance with other regulations pertaining to corporations practicing public accounting in this state that the board may prescribe.

(c) A limited liability company engaged in this state in the practice of public accounting shall register with the board as a limited liability company of public accountants, provided it meets the following requirements:

(1) Any manager, member, officer, or director of the limited liability company having authority over the practice of public accounting by the

limited liability company shall be a public accountant or certified public accountant of this state in good standing;

(2) Each resident manager in charge of an office of the limited liability company shall be a certified public accountant or a public accountant of this state in good standing; and

(3) The limited liability company shall be in compliance with other regulations pertaining to the limited liability companies practicing public accounting in this state that the board may prescribe.

(d) A public accountant operating as a sole proprietorship and engaged in this state in the practice of public accounting shall:

(1) Register with the board as a sole proprietor; and

(2) Comply with the requirements of § 17-12-403.

(e) Applications for registration shall be made upon the affidavit of a general partner, shareholder, or member who is licensed in this state as a certified public accountant or as a public accountant.

(f) The board shall in each case determine whether the applicant is eligible for registration.

(g) A firm that is so registered may use the words "public accountants" in connection with its firm.

(h) Notification shall be given to the board within one (1) month after the admission to or withdrawal of a partner, shareholder, or member from any partnership, corporation, or limited liability company so registered.

(i) A firm registered pursuant to this section may include nonlicensee owners, provided that:

(1) A majority of the ownership of the firm in terms of financial interests and voting rights of all partners, officers, directors, shareholders, members, or managers belongs to licensees of this state;

(2) The firm designates a licensee of this state who is responsible for the proper registration of the firm and identifies that individual to the board;

(3) All nonlicensee owners are active individual participants in the firm; and

(4) The firm complies with such other requirements as the board may impose by rule.

History. Acts 1975, No. 160, § 9; A.S.A. 1947, § 71-619; Acts 1997, No. 242, § 10; 1999, No. 180, § 24; 2009, No. 93, § 9.

Publisher's Notes. Acts 1975, No. 160, as amended, exempted the following persons from the certification requirements of subchapter 3 of this chapter if they registered as public accountants prior to Oct. 9, 1975: Any persons who: (1) were residents of Arkansas, or had a place of business therein; (2) were of good moral character; and (3) either (A) held themselves out to the public as public accountants and were engaged as principals, as distinguished from employees, on July 1,

1974, in the practice of public accounting as their principal occupation; or (B) were serving in the armed forces of the United States of America on July 1, 1975, and, immediately prior to entering such service, held themselves out to the public as public accountants and were engaged as principals, as distinguished from employees, in the practice of public accounting as their principal occupation for one year. In the latter case, the time for registration was extended for a period of six months from the time the person was separated from active duty.

Persons so registered, and holding a

permit under §§ 17-12-501 — 17-12-506, were to be known as “public accountants” and were to pay a registration fee not to exceed \$50.00.

Acts 1983, No. 170, extended the registration deadline to August 16, 1983, for registrants who met the education qualifications and other qualifications for registration as a public accountant pre-

scribed by Acts 1975, No. 160, as amended.

Acts 1985, No. 117, eliminated the registration deadline entirely.

Amendments. The 2009 amendment inserted (d), redesignated the remaining subsections accordingly, and made numerous minor stylistic changes.

17-12-403. Offices.

(a) Each office established or maintained in this state for the practice of public accounting in this state by a certified public accountant, public accountant, or firm shall be registered annually with the Arkansas State Board of Public Accountancy under this chapter.

(b) No fee shall be charged for the registration of one (1) office. The board at its discretion may require an annual fee to be paid for each additional office registered. The amount of the fee shall be established by board rule.

(c) Each office shall be under the direct supervision of a resident manager who may be either the sole proprietor or an owner of the firm or a staff employee licensed under this chapter. The title or designation “certified public accountant” or the abbreviation “CPA” shall not be used in connection with an office unless the resident manager is the holder of a certificate as a certified public accountant which is in full force and effect. The resident manager may serve in such a capacity at one (1) office only.

(d) The board shall prescribe by regulation the procedure to be followed in effecting such registrations.

History. Acts 1975, No. 160, § 10; A.S.A. 1947, § 71-620; Acts 1997, No. 242, § 11; 1999, No. 180, §§ 25, 26.

Publisher’s Notes. For reference to public accountants, see Publisher’s Notes to § 17-12-402.

17-12-404. Licensees associated with unregistered firms.

(a) A licensee shall not perform attest services in any partnership, corporation, limited liability company, or other entity which is not registered under this subchapter.

(b) Any licensee who performs or offers to perform professional services other than attest services while employed by or associated with any sole proprietor, partnership, corporation, limited liability company, or any other entity not registered with the Arkansas State Board of Public Accountancy shall not permit his or her name and the title “certified public accountant” or “CPA” or “public accountant” or “PA” to be used by the unregistered entity on any sign, card, electronic transmission, letterhead, financial statement or report, or any advertisement or directory without indicating thereon or therein that the sole proprietor, partnership, corporation, limited liability company, or other entity is not registered with the board.

History. Acts 1975, No. 160, § 6; A.S.A. 1947, § 71-616; Acts 1999, No. 180, § 27.

17-12-405. [Repealed.]

Publisher's Notes. This section, concerning registration of public accountants, was repealed by Acts 1999, No. 180, § 28.

The section was derived from Acts 1985, No. 117, § 1; A.S.A. 1947, § 71-615.1.

17-12-406. [Repealed.]

Publisher's Notes. This section, concerning licensees associated with an unregistered firm, was repealed by Acts

1999, No. 180, § 29. The section was derived from Acts 1997, No. 242, § 12.

SUBCHAPTER 5 — LICENSE RENEWAL

SECTION.

17-12-501. Renewal of license.

17-12-502. Continuing education requirement.

17-12-503. [Repealed.]

17-12-504. Renewals and renewal fees.

SECTION.

17-12-505. Inactive status.

17-12-506. [Repealed.]

17-12-507. Quality review of each practice unit.

Effective Dates. Acts 1975, No. 160, § 25; July 1, 1975.

Acts 1979, No. 432, § 10; Mar. 20, 1979. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that in order to properly define, describe and classify all revenues and other income which are required to be deposited in the State Treasury, it is necessary that the

provisions of this act become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in full force from and after its passage and approval."

Acts 1987, No. 824, § 5; July 1, 1989.

Acts 1999, No. 180, § 41; Jan. 1, 2000.

17-12-501. Renewal of license.

The Arkansas State Board of Public Accountancy shall renew licenses to persons who make application and demonstrate that their qualifications are in accordance with the provisions of this chapter.

History. Acts 1975, No. 160, § 11; 1979, No. 432, § 5; A.S.A. 1947, § 71-621; Acts 1997, No. 242, § 13; 1999, No. 180, § 31.

Publisher's Notes. Acts 1975, No. 160, as amended, exempted the following persons from the certification requirements of this subchapter if they registered as public accountants prior to Oct. 9, 1975: Any persons who: (1) were residents of

Arkansas, or had a place of business therein; (2) were of good moral character; and (3) either: (A) held themselves out to the public as public accountants and were engaged as principals, as distinguished from employees, on July 1, 1974, in the practice of public accounting as their principal occupation; or (B) were serving in the armed forces of the United States of America on July 1, 1975, and, immedi-

ately prior to entering such service, held themselves out to the public as public accountants and were engaged as principals, as distinguished from employees, in the practice of public accounting as their principal occupation for one year. In the latter case, the time for registration was extended for a period of six months from the time the person was separated from active duty.

Persons so registered, and holding a permit under §§ 17-12-501 — 17-12-506

were to be known as “public accountants” and were to pay a registration fee not to exceed \$50.00.

Acts 1983, No. 170, extended the registration deadline to August 16, 1983, for registrants who met the education qualifications and other qualifications for registration as a public accountant prescribed by Acts 1975, No. 160, as amended.

Acts 1985, No. 117, eliminated the registration deadline entirely.

17-12-502. Continuing education requirement.

(a) Every application for renewal of a license by any person who holds a certificate as a certified public accountant or registration as a public accountant shall be accompanied or supported by such evidence as the Arkansas State Board of Public Accountancy shall prescribe, documenting completion of forty (40) hours of acceptable continuing education, approved by the board, during the twelve-month period immediately preceding the expiration date of the license, or one hundred twenty (120) hours of acceptable continuing education approved by the board, during the thirty-six-month period immediately preceding the expiration date of the license.

(b) Failure by an applicant for renewal of a license to furnish such evidence shall constitute grounds for revocation, suspension, or refusal to issue or renew such a license in a proceeding under § 17-12-601 unless the board in its discretion shall determine the failure to have been due to reasonable cause.

(c) The board in its discretion may renew a license despite failure to furnish evidence of satisfaction of requirements of continuing education and may renew a license to an applicant who has previously maintained inactive status under § 17-12-505 upon the condition that the applicant follow a particular program or schedule of continuing education.

(d) In issuing rules, regulations, and individual orders in respect to requirements of continuing education, the board in its discretion:

(1) May, among other things, use and rely upon guidelines and pronouncements of recognized educational and professional associations;

(2) May prescribe content, duration, and organization of courses;

(3) Shall take into account the accessibility to applicants of such continuing education as it may require;

(4) Shall consider any impediments to interstate practice of public accountancy which may result from differences in the requirements in other states; and

(5) May provide for relaxation or suspension of the requirements in regard to applicants who certify that they do not intend to engage in the practice of public accountancy and for instances of individual hardship.

(e) The board is authorized to prescribe regulations, procedures, and policies in the manner and condition under which credit shall be given

for participation in a program of continuing education that the board may deem necessary and appropriate to maintain the highest standard of proficiency in the profession of public accounting.

(f) Examples of programs of continuing education which will be acceptable include, but are not limited to, programs or seminars sponsored by higher education institutions, government agencies, professional organizations of certified public accountants and public accountants, and firms of certified public accountants and public accountants.

(g) The board is authorized to prescribe conditions under which sponsors of continuing education programs must register with the board or a third party approved by the board in order for the programs to be acceptable to the board. A fee for the registration may be charged in an amount established by board rule. In the event the board provides for registration with a third party, the fee charged by the third party may be charged to and paid by the sponsor.

(h) The board in its discretion may require licensees to provide evidence of compliance with the requirements of this section and may investigate licensees to verify compliance with this section. All persons acting on behalf of the board in connection with such investigations shall be considered officers or employees of the State of Arkansas for purposes of:

(1) Immunity from civil liability pursuant to § 19-10-301 et seq.; and

(2) Payment of actual damages on behalf of state officers or employees pursuant to § 21-9-201 et seq.

History. Acts 1975, No. 160, § 11; 1979, No. 432, § 5; A.S.A. 1947, § 71-621; Acts 1997, No. 242, §§ 14, 15; 1999, No. 180, § 32; 2005, No. 54, § 13.

Publisher's Notes. For reference to public accountants, see Publisher's Notes to § 17-12-501.

Amendments. The 2005 amendment substituted "expiration date of the license" for "date of application" and "date of the application" in (a).

17-12-503. [Repealed.]

Publisher's Notes. This section, concerning the experience requirement, was repealed by Acts 1999, No. 180, § 33. The

section was derived from Acts 1975, No. 160, § 11; 1979, No. 432, § 5; A.S.A. 1947, § 71-621; Acts 1997, No. 242, § 16.

17-12-504. Renewals and renewal fees.

(a)(1) Individual certified public accountants and public accountants shall pay an annual fee in an amount to be determined by Arkansas State Board of Public Accountancy rule.

(2) Unless otherwise provided by board rule, all licenses shall expire on December 31 of each year and may be renewed annually for a period of one (1) year by current licensees in good standing upon payment of the annual renewal fee.

(b)(1) A firm registered with the board shall pay an annual registration fee in an amount to be determined by board rule.

(2) Unless otherwise provided by board rule, all firm registrations shall expire on December 31 of each year and may be renewed annually for a period of one (1) year by registrants in good standing upon payment of the annual renewal fee.

(c) The board may establish a reduced renewal fee for any licensee who has attained a specified age and has met all other qualifications determined by the board.

(d)(1) A licensee may choose not to renew a license by notifying the board in writing prior to the expiration date of the license.

(2) The licensee shall surrender the license to the board immediately upon its expiration or otherwise comply with board rules concerning the disposition of the license.

(e) A licensee who complies with the requirements of subsection (d) of this section may apply to renew or reinstate his or her license or to receive a new license as provided in this section.

(f)(1) Beginning the first day of the first month after expiration, each licensee shall pay a monthly penalty for the late renewal of a license or registration in an amount determined by the board.

(2) If the license or registration is not renewed by the first day of the fourth month after expiration, the license or registration shall lapse.

(g)(1) Upon application received within three (3) years following the expiration of a license, the board may reinstate a lapsed license.

(2) A license may be reinstated if the applicant:

(A) Pays a reinstatement fee determined by the board; and

(B) Complies with continuing professional education and any other requirements applicable to:

(i) The renewal of the license at the date of its expiration; and

(ii) The reinstatement of the license at the date of the application for reinstatement.

(h)(1) Any license or registration that is not reinstated within three (3) years following expiration shall be void and shall not be subject to renewal or reinstatement.

(2) The holder of a void license or registration may apply for a new license or registration under § 17-12-301 et seq. or § 17-21-401 et seq.

(3) The board may require the applicant to comply with educational or other requirements deemed appropriate by the board, including successful completion of the examination identified in § 17-12-304 in order to obtain a new license.

(i)(1) Any license that has expired but has not been suspended or revoked by the board under § 17-12-601(a)(8) prior to August 12, 2005, shall be considered lapsed and may be reinstated under subsection (g) of this section upon application received by the board within one (1) year following August 12, 2005.

(2)(A) If not reinstated under this subsection, the expired license shall not be subject to renewal or reinstatement.

(B) The holder of the expired license may apply for a new license or registration under subsection (h) of this section.

(j) Any licensee who fails to timely renew his or her license to practice shall not perform attest services as defined in § 17-12-

103(a)(2) until he or she has obtained a license to practice under this subsection.

History. Acts 1975, No. 160, § 11; 1979, No. 432, § 5; A.S.A. 1947, § 71-621; Acts 1997, No. 242, § 17; 1999, No. 180, § 34; 2005, No. 54, § 14.

Amendments. The 2005 amendment

inserted "Unless otherwise provided by board rule" at the beginning of (a)(2) and (b)(2); substituted "current licensee" for "certificate holders and registrants" in (a)(2); and added (c)-(j).

17-12-505. Inactive status.

The Arkansas State Board of Public Accountancy may by rule create an exception to the continuing education requirement of § 17-12-502 for licensees who do not perform or offer to perform for the public one (1) or more kinds of services involving the use of accounting or auditing skills, including issuance of reports on financial statements or of one (1) or more kinds of management advisory, financial advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters. Each licensee granted such an exception by the board must place the word "inactive" adjacent to his or her CPA title or PA title on any business card, letterhead, electronic transmission, or any other document or device, with the exception of his or her CPA certificate or PA registration, on which his or her CPA or PA title appears.

History. Acts 1975, No. 160, § 11; 1979, No. 432, § 5; A.S.A. 1947, § 71-621; Acts 1999, No. 180, § 35.

Publisher's Notes. For reference to public accountants, see Publisher's Notes to § 17-12-501.

17-12-506. [Repealed.]

Publisher's Notes. This section, concerning reinstatement, was repealed by Acts 2005, No. 54, § 15. The section was

derived from Acts 1975, No. 160, § 11; 1979, No. 432, § 5; A.S.A. 1947, § 71-621; Acts 1999, No. 180, § 36.

17-12-507. Quality review of each practice unit.

(a) The Arkansas State Board of Public Accountancy may by rule require as a condition for the renewal of a license a quality review of each practice unit maintained in this state.

(b)(1) The board may charge the accountant or firm reviewed a fee for each:

(A) Quality review of each practice unit; and

(B) Follow-up action to a quality review that is not in conformity with applicable professional standards.

(2) The amount of the fee shall be established by board rule.

(c) The quality review shall consist of either a uniform or random annual submission by each practice unit of the following kinds of reports issued by that practice unit during the twelve-month period immediately preceding the date of submission, if reports were issued during the period:

(1) A compilation report;

(2) A review report;

- (3) An audit report;
 - (4) An audit report under a federal grant program or other government program; and
 - (5) An examination of prospective financial information.
- (d) All persons acting on behalf of the board in a quality review program under this section shall be considered officers or employees of the State of Arkansas for purposes of:
- (1) Immunity from civil liability pursuant to § 19-10-301 et seq.; and
 - (2) Payment of actual damages on behalf of state officers or employees pursuant to § 21-9-201 et seq.

(e) All financial statements, working papers, or other documents obtained from applicants for quality review shall be confidential and shall not be subject to public inspection except pursuant to an order of a court of competent jurisdiction. However, the documents may be introduced as evidence in any relevant proceedings before the board.

(f) For purposes of this section, a “practice unit” shall be deemed to be any firm registered with the board under § 17-12-401 et seq., and any licensee not employed by or associated with any firm registered with the board under § 17-12-401 et seq. but who has issued one (1) or more compilation reports.

(g)(1) Notwithstanding any provision to the contrary in this chapter, a certified public accountant, public accountant, or firm of certified public accountants or public accountants currently licensed by another state or foreign country shall not be required to obtain a license under this chapter for the sole purpose of conducting peer review as defined by board rule of a licensee in this state and may use the applicable title “certified public accountant” or “public accountant” or abbreviation “CPA” or “PA” solely in conjunction with the peer review activities.

(2) Any certified public accountant, public accountant, or firm of certified public accountants or public accountants, whether licensed in this state or in another jurisdiction, shall meet standards adopted by the board to accomplish the goals of this chapter in order to qualify to perform peer review of licensees under this chapter.

History. Acts 1987, No. 824, §§ 1-3; 1999, No. 180, § 37; 2005, No. 54, § 16.

A.C.R.C. Notes. References to “this chapter” or “subchapter 5” in the text of sections of this chapter enacted prior to 1987 may not apply to this section which

was enacted subsequently.

Amendments. The 2005 amendment redesignated former (a) as present (a) and (c); inserted present (b); redesignated former (b)-(d) as present (d)-(f); and added (g).

SUBCHAPTER 6 — REVOCATION AND SUSPENSION

SECTION.

- 17-12-601. Grounds generally.
- 17-12-602. Sanctions.

SECTION.

- 17-12-603. Procedure.
- 17-12-604. Reinstatement.

Effective Dates. Acts 1975, No. 160, § 25: July 1, 1975.

Acts 1979, No. 432, § 10: Mar. 20, 1979. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that in order to properly define, describe and classify all revenues and other income which are required to be deposited in the

State Treasury, it is necessary that the provisions of this act become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in full force from and after its passage and approval."

Acts 1999, No. 180, § 41: Jan. 1, 2000.

17-12-601. Grounds generally.

(a) The following acts, conduct, or practices are prohibited, and any licensee or holder of a practice privilege found guilty by the Arkansas State Board of Public Accountancy of the acts, conducts, or practices shall be subject to disciplinary action as provided in § 17-12-602 after notice and hearing as provided in § 17-12-603:

(1) Fraud, dishonesty, or deceit in obtaining or attempting to obtain a certificate or registration as a certified public accountant or public accountant, registration of a firm, or a practice privilege under this chapter;

(2) Dishonesty, fraud, or gross negligence in the practice of public accountancy;

(3) Violation of any of the provisions of this chapter;

(4) Violation of a rule of professional conduct or other rule promulgated by the board under the authority granted by this chapter;

(5) Conviction of a felony under the law of any state or of the United States;

(6) Conviction of any crime an element of which is dishonesty, fraud, or moral turpitude under the law of any state or of the United States;

(7) Imposition of any sanction or disciplinary action, other than for failure to pay annual fees, by the United States Securities and Exchange Commission, Public Company Accounting Oversight Board, Internal Revenue Service, or other federal or state agency or foreign authority or credentialing body that regulates public accounting regarding the licensee's conduct while rendering public accounting or other professional services;

(8) Conduct discreditable to the public accounting profession; and

(9) Violation of any board order or agreement for the resolution of asserted violations of this chapter, a board rule of professional conduct, or other board rule.

(b) The board may deny an application for a license, registration, certificate, or practice privilege if it finds the applicant committed any of the acts, conduct, or practices prohibited by subsection (a) of this section.

History. Acts 1975, No. 160, § 12; Acts 1997, No. 242, § 18; 1999, No. 180, § 38; 2005, No. 54, § 17.
1979, No. 432, § 6; A.S.A. 1947, § 71-622;

Amendments. The 2005 amendment rewrote this section.

17-12-602. Sanctions.

(a) If a licensee or holder of a practice privilege under § 17-12-311 is found to have committed an action or omission identified in § 17-12-601, the Arkansas State Board of Public Accountancy may impose any one (1) or more of the following sanctions:

(1) Suspension, revocation, or denial of his or her license or practice privilege or the renewal thereof;

(2) A penalty not to exceed one thousand dollars (\$1,000) for each violation;

(3) Completion of appropriate education programs or courses;

(4) Preissuance review of audits, review reports, or compilations;

(5) Quality review conducted in such a manner as the board may specify;

(6) Successful completion of the licensing examination;

(7) Conditions or restrictions upon the license, registration, or practice privilege; and

(8) All other requirements or penalties the board finds appropriate to the circumstances of the case and that would achieve the desired disciplinary purposes but that would not impair the public welfare and morals.

(b) In any proceeding in which the board finds that the licensee or holder of a practice privilege has committed any action or omission identified in § 17-12-601, the board may also require the licensee to pay the cost of the proceeding.

(c) Each instance when a federal or state law or any board rule is violated shall constitute a separate violation.

(d) Upon imposition of a sanction, the board may order that the license, permit, certificate, credential, registration, or practice privilege be suspended until its holder has complied in full with all applicable sanctions imposed under this section.

(e)(1) The power and authority of the board to impose sanctions authorized in this section are independent of and in addition to any other civil or criminal proceeding concerning the same violation.

(2) The imposition of a penalty does not preclude the board from imposing other sanctions short of revocation.

(f) The board is authorized to file suit in either the Pulaski County Circuit Court or the circuit court of any county in which the defendant resides or does business to collect any monetary penalty assessed under this chapter if the penalty is not paid within the time prescribed by the board.

History. Acts 1975, No. 160, § 13; § 19; 1999, No. 180, § 39; 2005, No. 54, A.S.A. 1947, § 71-623; Acts 1997, No. 242, § 18; 2009, No. 93, § 10.

Amendments. The 2005 amendment rewrote this section.

The 2009 amendment, in (a), substi-

tuted “§ 17-12-311” for “§ 17-12-401(i)” and made minor stylistic changes.

17-12-603. Procedure.

(a) **COMMENCEMENT OF PROCEEDING.** The Arkansas State Board of Public Accountancy may initiate proceedings under this chapter either on its own motion or on the complaint of any person.

(b) **NOTICE—SERVICE AND CONTENTS.** A written notice stating the nature of the charges against the accused and the time and place of the hearing before the board on the charges shall be served on the accused not less than thirty (30) days prior to the date of the hearing either personally or by mailing a copy by registered mail to the address of the accused last known to the board.

(c) **FAILURE TO APPEAR.** If, after having been served with the notice of hearing, the accused fails to appear at the hearing and defend, the board may proceed to hear evidence against him or her and may enter any order as shall be justified by the evidence, which order shall be final unless he or she petitions for a review thereof as provided herein. However, within thirty (30) days from the date of any order, upon a showing of good cause for failure to appear and defend, the board may reopen the proceedings and may permit the accused to submit evidence in his or her behalf.

(d) **RIGHTS OF ACCUSED.** At any hearing the accused may appear in person and by counsel, produce evidence and witnesses on his or her own behalf, cross-examine witnesses, and examine such evidence as may be produced against him or her. A corporation may be represented before the board by counsel or by a shareholder who is a certified public accountant or public accountant of this state in good standing. The accused shall be entitled, on application to the board, to the issuance of subpoenas to compel the attendance of witnesses on his or her behalf.

(e) **SUBPOENAS—OATHS.** The board or any member thereof may issue subpoenas to compel the attendance of witnesses and the production of documents and may administer oaths, take testimony, hear proofs, and receive exhibits in evidence in connection with or upon hearing under this chapter. In case of disobedience to a subpoena, the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence.

(f) **EVIDENCE.** The board shall not be bound by technical rules of evidence.

(g) **RECORD.** A stenographic record of the hearings shall be kept, and a transcript filed with the board.

(h) **ATTORNEY FOR THE BOARD.** At all hearings, the board’s legal counsel shall appear and represent the board.

(i) **DECISION.** The decision of the board shall be by majority vote.

(j) JUDICIAL REVIEW. Anyone adversely affected by any order of the board shall be entitled to pursue all rights and remedies available under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1975, No. 160, § 14; 1979, No. 432, § 7; A.S.A. 1947, § 71-624.

17-12-604. Reinstatement.

Upon application in writing and after hearing pursuant to notice, the Arkansas State Board of Public Accountancy may issue a new certificate to a certified public accountant whose certificate shall have been revoked, or the board may permit the reregistration of anyone whose registration has been revoked or may reissue or modify the suspension of any license to practice public accounting which has been revoked or suspended.

History. Acts 1975, No. 160, § 15; A.S.A. 1947, § 71-625; Acts 1999, No. 180, § 40.

Publisher's Notes. For reference to registered public accountants, see § 17-12-108.

SUBCHAPTER 7 — LIABILITY OF ACCOUNTANTS

SECTION.

17-12-701. Applicability.

17-12-702. No liability to persons not in privity — Exceptions.

A.C.R.C. Notes. References to “this chapter” in the text of sections of this chapter enacted prior to 1987 may not apply to this subchapter which was enacted subsequently.

Effective Dates. Acts 1987, No. 661, § 5: Apr. 6, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that the liability of accountants and attorneys to persons not in privity of contract with them should

be specifically outlined by legislative enactment; that this Act establishes the limits of such liability; and that this Act should go into effect as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

17-12-701. Applicability.

This subchapter shall apply only to acts, omissions, decisions, or other conduct in connection with professional services occurring or rendered on or after April 6, 1987.

History. Acts 1987, No. 661, § 3.

Publisher's Notes. This section is also

codified as §§ 16-22-310(b) and 16-114-301.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey —
Attorneys, 10 U. Ark. Little Rock L.J. 539.

17-12-702. No liability to persons not in privity — Exceptions.

No person, partnership, or corporation licensed or authorized to practice under the Public Accountancy Act of 1975, § 17-12-101 et seq., or any of its employees, partners, members, officers, or shareholders shall be liable to persons not in privity of contract with the person, partnership, or corporation for civil damages resulting from acts, omissions, decisions, or other conduct in connection with professional services performed by such a person, partnership, or corporation, except for:

(1) Acts, omissions, decisions, or conduct that constitutes fraud or intentional misrepresentations; or

(2) Other acts, omissions, decisions, or conduct if the person, partnership, or corporation was aware that a primary intent of the client was for the professional services to benefit or influence the particular person bringing the action. For the purposes of this subdivision (2), if the person, partnership, or corporation:

(A) Identifies in writing to the client those persons who are intended to rely on the services; and

(B) Sends a copy of the writing or similar statement to those persons identified in the writing or statement,
then the person, partnership, or corporation or any of its employees, partners, members, officers, or shareholders may be held liable only to the persons intended to so rely, in addition to those persons in privity of contract with such a person, partnership, or corporation.

History. Acts 1987, No. 661, § 1.

Publisher's Notes. This section is also codified as § 16-114-302.

Acts 1993, No. 1003, § 1316, which repeals laws in conflict with the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., and amends provisions relating to professional service, is codified

as § 4-32-1316, and provides, in part: "By way of example and not by way of limitation of the foregoing, § 17-12-702 presently applies to persons, partnerships, and corporations and shall hereafter be deemed to apply to persons, partnerships, corporations, and limited liability companies."

RESEARCH REFERENCES

Ark. L. Rev. Morrison & George, Arkansas's Privity Requirement for Attorney and Accountant Liability, 51 Ark. L. Rev. 697.

U. Ark. Little Rock L.J. Survey —
Attorneys, 10 U. Ark. Little Rock L.J. 539.

CHAPTER 13

AGRICULTURAL CONSULTANTS

SECTION.

- 17-13-101. Title.
 17-13-102. Purpose.
 17-13-103. Functions of licensed agricultural consultant.
 17-13-104. Inapplicable to forestry consultants.
 17-13-105. Penalty.

SECTION.

- 17-13-106. Administration.
 17-13-107. Requirements for licensing.
 17-13-108. Issuance of license — Expiration.
 17-13-109. Promotional compensation restricted — Exception.
 17-13-110. Disposition of fees.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-46-101 et seq.

Former chapter 13, concerning alarm systems businesses, was repealed by Acts 1989, No. 926, § 17. The former chapter was derived from the following sources:

- 17-13-101. Acts 1985, No. 1004, § 1; A.S.A. 1947, § 71-5701.
 17-13-102. Acts 1985, No. 1004, § 2; A.S.A. 1947, § 71-5702; Acts 1987, No. 794, § 1.
 17-13-103. Acts 1985, No. 1004, § 3; A.S.A. 1947, § 71-5703; Acts 1987, No. 794, § 2.
 17-13-104. Acts 1985, No. 1004, § 12; A.S.A. 1947, § 71-5712.
 17-13-105. Acts 1985, No. 1004, § 12; A.S.A. 1947, § 71-5712.
 17-13-201. Acts 1985, No. 1004, § 4; A.S.A. 1947, § 71-5704; Acts 1987, No. 794, § 3.
 17-13-202. Acts 1985, No. 1004, § 4; A.S.A. 1947, § 71-5704.
 17-13-203. Acts 1985, No. 1004, § 4; A.S.A. 1947, § 71-5704.
 17-13-204. Acts 1985, No. 1004, § 4; A.S.A. 1947, § 71-5704.
 17-13-205. Acts 1985, No. 1004, § 5; A.S.A. 1947, § 71-5705.
 17-13-206. Acts 1985, No. 1004, § 12; A.S.A. 1947, § 71-5712.
 17-13-207. Acts 1985, No. 1004, § 7; A.S.A. 1947, § 71-5707.

- 17-13-301. Acts 1985, No. 1004, § 2; A.S.A. 1947, § 71-5702; Acts 1987, No. 794, § 1.
 17-13-302. Acts 1985, No. 1004, § 2; A.S.A. 1947, § 71-5702.
 17-13-303. Acts 1985, No. 1004, § 7; A.S.A. 1947, § 71-5707.
 17-13-304. Acts 1985, No. 1004, § 9; A.S.A. 1947, § 71-5709; Acts 1987, No. 794, § 8.
 17-13-305. Acts 1985, No. 1004, § 2; A.S.A. 1947, § 71-5702.
 17-13-306. Acts 1985, No. 1004, § 10; A.S.A. 1947, § 71-5710.
 17-13-307. Acts 1985, No. 1004, § 7; A.S.A. 1947, § 71-5707; Acts 1987, No. 794, § 6.
 17-13-308. Acts 1985, No. 1004, § 6; A.S.A. 1947, § 71-5706; Acts 1987, No. 794, § 4.
 17-13-309. Acts 1985, No. 1004, § 7; A.S.A. 1947, § 71-5707; Acts 1987, No. 794, § 5.
 17-13-310. Acts 1985, No. 1004, § 7; A.S.A. 1947, § 71-5707.
 17-13-311. Acts 1985, No. 1004, § 7; A.S.A. 1947, § 71-5707; Acts 1987, No. 794, § 5.
 17-13-312. Acts 1985, No. 1004, § 8; A.S.A. 1947, § 71-5708; Acts 1987, No. 794, § 7.
 17-13-313. Acts 1985, No. 1004, § 11; A.S.A. 1947, § 71-5711; Acts 1987, No. 794, § 9.

17-13-101. Title.

This chapter shall be known as the “Agricultural Consultants Licensing Act of 1987”.

History. Acts 1987, No. 609, § 1.

17-13-102. Purpose.

It is the intent of the General Assembly that the agricultural community continue to have a choice of seeking the advice of whomever they choose regarding the areas indicated in this chapter as the functions of licensed agricultural consultants. It is also the General Assembly's intent that by providing a mechanism whereby persons may be licensed by the State Plant Board as agricultural consultants, they may thereby hold themselves out as "licensed agricultural consultants" which will inform the public that they have met the qualifications required by this chapter.

History. Acts 1987, No. 609, § 3.

17-13-103. Functions of licensed agricultural consultant.

A licensed agricultural consultant is a person who is licensed by the State Plant Board to perform the following functions:

- (1) Provide advice or prescriptions for the control or eradication of any insect or mite pest;
- (2) Provide advice or prescriptions for the control or eradication of any plant pathogen, including nematodes;
- (3) Provide advice or prescriptions for the control or eradication of any weed;
- (4) Provide advice or prescriptions for the use of fertilizer, lime, or micronutrients based on soil classification and cropping systems and soil or plant tests; and
- (5) Provide other functions as the board may deem appropriate.

History. Acts 1987, No. 609, § 2; 2005, No. 857, § 1.

Amendments. The 2005 amendment added (5) and made related changes.

17-13-104. Inapplicable to forestry consultants.

This chapter shall in no way apply to:

- (1) Forestry consultants or in any way restrict or regulate forestry consultants; or
- (2) State, federal, or local government employees or employees of local conservation districts or in any way restrict or regulate those employees while they are working in their official capacity.

History. Acts 1987, No. 609, § 11; 2005, No. 857, § 2. inserted the subdivision (1) designations and made related changes; and added (2).

Amendments. The 2005 amendment

17-13-105. Penalty.

Any person who holds himself or herself out as a licensed agricultural consultant and who is not licensed as an agricultural consultant by the State Plant Board shall be subject to a fine not to exceed six hundred

dollars (\$600) for the first offense and not to exceed one thousand dollars (\$1,000) for subsequent offenses.

History. Acts 1987, No. 609, § 9; 2005, No. 857, § 3.

Amendments. The 2005 amendment substituted “six hundred dollars (\$600) for the first offense and not to exceed one

thousand dollars (\$1,000) for subsequent offenses” for “one hundred dollars (\$100) for the first offense and not to exceed five hundred dollars (\$500) for subsequent offenses.”

17-13-106. Administration.

The State Plant Board shall:

- (1) Administer and enforce this chapter;
- (2) Promulgate, pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., regulations necessary for the implementation of this chapter;
- (3) Establish annual license fees not to exceed one hundred dollars (\$100);
- (4) Formulate criteria for continuing educational training of licensed agricultural consultants in cooperation with the cooperative extension service; and
- (5) Revoke or suspend any agricultural consultant’s license for cause.

History. Acts 1987, No. 609, § 4; 2005, No. 857, § 4.

substituted “one hundred dollars (\$100)” for “fifty dollars (\$50.00)” in (3).

Amendments. The 2005 amendment

17-13-107. Requirements for licensing.

(a)(1) No person may provide agricultural consulting for a fee that is directly tied to and identifiable with agricultural consulting without a license issued by the State Plant Board under this chapter.

(2) A person who provides agricultural consulting without charging a fee may be licensed under this chapter if the person meets the requirements of this chapter.

(b) Within the first year after August 12, 2005, a person may be licensed as an agricultural consultant if the person:

- (1) Is currently licensed as an agricultural consultant by the board;
- (2) Is certified under the Certified Crop Advisors Program of the American Society of Agronomy;
- (3) Is certified by the National Alliance of Independent Crop Consultants; or
- (4) Has at least five (5) years of agricultural consultant-related experience.

(c) From two (2) to five (5) years after August 12, 2005, a person may be licensed as an agricultural consultant if the person:

- (1) Has completed two (2) full years of training at a college or university acceptable to the board, with at least nine (9) semester hours of credit or their equivalent in appropriate agricultural disciplines;
- (2) Has three (3) years of experience in the field of crop management; and

(3) Passes a written examination administered by the board or by certified crop advisors.

(d) Beyond the fifth year after August 12, 2005, a person may be licensed as an agricultural consultant if:

(1) The person has:

(A) A minimum of a bachelor's degree in a board-approved crop related field and two (2) years of experience working in the field of crop management; or

(B) Seven (7) years of continuous experience working for a licensed agricultural consultant after August 12, 2005; and

(2) The person passes a written examination administered by the board or by certified crop advisors.

History. Acts 1987, No. 609, § 5; 2005, No. 857, § 5.

Amendments. The 2005 amendment rewrote this section.

17-13-108. Issuance of license — Expiration.

If the educational qualifications are met, all required examinations are successfully passed, and all required fees paid, a license shall be issued by the State Plant Board. The licenses shall expire on December 31 of each year unless sooner revoked, cancelled, or suspended by the board for cause and shall be renewable pursuant to board rules. No license issued by the board shall be assignable or transferable.

History. Acts 1987, No. 609, § 7.

A.C.R.C. Notes. Acts 1987, No. 609, § 6, provided that any person who has a degree in appropriate agricultural disciplines and has three years of experience in the field of crop, livestock and poultry management immediately preceding July 20, 1987, shall be issued a license without examination, if such information is pro-

vided to and verified by the State Plant Board within 12 months after July 20, 1987, and any person who does not have such a degree, but has at least three or more years of experience immediately preceding July 20, 1987, may be licensed upon passage of a written examination administered by the board.

17-13-109. Promotional compensation restricted — Exception.

No licensed agricultural consultant shall accept money or any other thing of value in excess of two hundred dollars (\$200) from any person or entity for recommending or otherwise promoting a particular product by virtue of his or her position as a licensed agricultural consultant. However, this section shall not be construed or interpreted as prohibiting licensed agricultural consultants from engaging in and receiving compensation for agricultural research. The State Plant Board may suspend or revoke the license of any person which the board determines to have violated this section.

History. Acts 1987, No. 609, § 8.

17-13-110. Disposition of fees.

All fees collected by the State Plant Board under this chapter shall be deposited into the State Treasury as special revenues and credited to the State Plant Board Fund.

History. Acts 1987, No. 609, § 10.

CHAPTER 14**APPRAISERS**

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS APPRAISER LICENSING AND CERTIFICATION BOARD.
3. LICENSING RESTRICTIONS.
4. APPRAISAL MANAGEMENT COMPANY REGISTRATION ACT.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-51-101 et seq.

Effective Dates. Acts 1991, No. 416, § 17: Mar. 8, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that minimum standards must be provided for the licensing and certification of appraisers in accordance with the requirements of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and that there will continue to be a need to provide adequate protection and safeguards for the public; that such provision should be enacted immediately; and that this act would so provide. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace,

health, and safety shall be in full force and effect from its passage and approval."

Acts 1991, No. 541, § 17: Mar. 14, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that minimum standards must be provided for the licensing and certification of appraisers in accordance with the requirements of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and that there will continue to be a need to provide adequate protection and safeguards for the public; that such provision should be enacted immediately; and that this act would so provide. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from its passage and approval."

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-14-101. Title.
- 17-14-102. Necessity for registration, license, or certificate.
- 17-14-103. Definitions.
- 17-14-104. Exceptions to registration, licensing, or certification.

SECTION.

- 17-14-105. Right and privileges of licensed or registered appraiser.
- 17-14-106. Absence of liability.

Effective Dates. Acts 2009, No. 628, § 20: Jan. 1, 2010. provided: "This act takes effect January 1, 2010." Effective date clause

RESEARCH REFERENCES

ALR. Liability to real property purchaser for negligent appraisal of property value. 21 A.L.R.4th 867.

17-14-101. Title.

Section 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq. shall be known and may be cited as the "Arkansas Appraiser Licensing and Certification Act".

History. Acts 1991, No. 416, § 1; 1991, No. 541, § 1; 2009, No. 628, § 2. substituted "Section 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq. shall" for "This chapter will."

Amendments. The 2009 amendment

17-14-102. Necessity for registration, license, or certificate.

(a) The Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., is created in response to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and specifies three (3) classes of appraisers: state-licensed, state-certified residential, and state-certified general appraisers for federally related transactions. A fourth class is created for nonfederally related transactions, which shall be known as "state-registered appraisers".

(b) It is the intent of the General Assembly that this law be no more restrictive than required under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

History. Acts 1991, No. 416, §§ 7, 13; 1991, No. 541, §§ 7, 13; 1993, No. 413, § 1; 2001, No. 1256, § 1; 2009, No. 628, § 3. 301 et seq.," for "This chapter" in (a), and made minor stylistic and punctuation changes.

Amendments. The 2009 amendment substituted "The Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq." for "This chapter" in (a), and made minor stylistic and punctuation changes.

U.S. Code. Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in this section, is codified as 12 U.S.C. §§ 3310 and 3331 et seq.

17-14-103. Definitions.

As used in the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.:

(1) "Appraisal":

(A) As a noun, means the act or process of estimating value or an estimate of value; and

(B) As an adjective, means of or pertaining to appraising and related functions, i.e., appraisal practice and appraisal services;

(2) "Appraisal Foundation" and "foundation" mean the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois;

(3) "Appraisal practice" and "appraisal services" mean the work or services performed by appraisers for clients;

(4) "Appraisal Standards Board" means the board created under Article XI, sections 11.01 — 11.13 inclusive, of the bylaws of the Appraisal Foundation, as amended April 22, 1990;

(5) "Appraisal Subcommittee" means the subcommittee of the federal Financial Institutions Examination Council established under Title XI, the Real Estate Appraisal Reform Amendments of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, section 1102, by amendment to the Federal Financial Institutions Examination Council Act of 1978, 12 U.S.C. § 3301 et seq., through the addition of new section 1011, "Establishment of Appraisal Subcommittee";

(6) "Appraiser" or "real estate fee appraiser" means any person who, for a fee or other consideration, develops and communicates a real estate appraisal or otherwise gives an opinion of the value of real estate or any interest in real estate;

(7) "Appraiser Qualifications Board" means the board created under Article XII, sections 12.01 — 12.08 inclusive, of the bylaws of the Appraisal Foundation, as amended April 22, 1990;

(8) "Board" means the Arkansas Appraiser Licensing and Certification Board established under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.;

(9) "Client" means any person for whom an appraiser performs a service;

(10) "Federal financial institutions regulatory agencies" means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration;

(11) "Federally related transaction" means any real estate-related financial transaction which:

(A) A financial institution, a federal financial institution's regulatory agency, or the Resolution Trust Corporation engages in, contracts for, or regulates; and

(B) In accordance with any federal law, rule, or regulation, as the same may be amended, requires the services of an appraiser;

(12) "Financial institution" means an insured depository institution as defined in the Federal Deposit Insurance Act, 12 U.S.C. § 1813 (c) (2), or an insured credit union as defined in section 101 of the Federal Credit Union Act, 12 U.S.C. 1751 et seq.;

(13) "Independent appraisal assignment" means any engagement for which an appraiser is employed or retained to act or to be perceived by third parties or the public as acting as a disinterested third party in

rendering an unbiased analysis, opinion, evaluation, or conclusions relating to the nature, quality, value, or utility identified as real estate or real property;

(14) "Market analysis" or "broker's price opinion" means a proposed sale price opinion or recommended listing price given by a licensed real estate broker, sales person, or other to a potential seller, purchaser, or third party;

(15) "Personal property" means identifiable portable and tangible objects which are considered by the general public as being "personal", e.g., furnishings, artwork, antiques, gems and jewelry, collectibles, machinery and equipment; all property that is not classified as real estate;

(16) "Real estate" means an identified parcel or tract of land, including improvements, if any;

(17)(A) "Real estate appraisal" means an unbiased estimate of the nature, quality, value, or utility of an interest in, or aspect of, identified real estate and related personalty.

(B)(i) A real estate appraisal may be classified by subject matter into either a valuation or an evaluation.

(ii) Valuation is the process of estimating the market value, investment value, insurable value, or other properly defined value of an identified interest or interests in a specific parcel or parcels of real estate as of a given date.

(iii) Evaluation or analysis is the study of the nature, quality, or utility of a parcel of real estate, or interests in or aspects of real property, in which a value estimate is not necessarily required, i.e., a study of real estate or real property other than estimating value;

(18) "Real estate-related financial transaction" means any transaction involving:

(A) The sale, lease, purchase, investment in, or exchange of real property, including interests in property, or the financing thereof;

(B) The refinancing of real property or interests in real property; and

(C) The use of real property or interests in property as security for a loan or investment, including mortgage-backed securities;

(19) "Real property" means interest, benefits, and rights inherent in the ownership of real estate;

(20) "Report" means:

(A) Any communication, written or oral, of an appraisal, review, or analysis;

(B) The document that is transmitted to the client upon completion of an assignment; or

(C) The tangible expression of an appraiser's service;

(21) "Review" means the act or process of critically studying a report prepared by another;

(22) "State-certified appraiser" means any individual who has satisfied the requirements for state certification in the State of Arkansas and who is qualified to perform appraisals of all real property types of any monetary size and complexity;

(23) “State-certified residential appraiser” means any individual who has satisfied the requirements for state certification in the State of Arkansas and who is qualified to perform appraisals of all property types up to a monetary size and complexity as prescribed by the Appraisal Subcommittee and the federal financial institutions regulatory agencies;

(24) “State-licensed appraiser” means any individual who has satisfied the requirements for state licensing in the State of Arkansas and who is qualified to perform appraisals of all property types up to a monetary size and complexity as prescribed by the Appraisal Subcommittee, and the federal financial institutions regulatory agencies;

(25) “State-registered appraiser” means any person who has satisfied the requirements for registering as set forth in § 17-14-307 or requirements as may have been determined by the board and who may perform appraisals on any type of property except when the purpose of the appraisal is for use in federally related transactions;

(26) “Uniform Standards of Professional Appraisal Practice” means the entire body of rules, definitions, binding requirements, guidelines, explanatory comments, and ethical conduct provisions, as promulgated by the Appraisal Standards Board of the Appraisal Foundation, which provide the basis for an individual to conduct the practice of professional appraisal with integrity, objectivity, and independent judgment and in an ethical manner; and

(27) “Written appraisal” means a written statement used in connection with a federally related transaction that is independently and impartially prepared by a licensed appraiser or certified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

History. Acts 1991, No. 416, § 2; 1991, No. 541, § 2; 1993, No. 413, § 2; 1993, No. 1270, § 1; 2001, No. 1256, § 2; 2009, No. 628, §§ 4, 5.

Amendments. The 2009 amendment substituted “The Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.” for “this chapter” in the introductory language; and substituted “under the Arkansas Appraiser Licensing and

Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.” for “pursuant to this chapter” in (8).

U.S. Code. Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in this section, is codified as 12 U.S.C. §§ 3310 and 3331 et seq.

Section 1102 of the act is codified as 12 U.S.C. § 3310.

17-14-104. Exceptions to registration, licensing, or certification.

(a)(1)(A) Except when an interstate transaction or a federally related transaction is involved, the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., does not apply to a real estate broker or sales person licensed by this state who:

(i) In the ordinary course of his or her business, gives to a potential seller or third party a written report called a market analysis or a

broker's price opinion as to the recommended listing price of real estate or an opinion to a potential purchaser or third party as to the recommended price of real estate; or

(ii) Provides testimony regarding an opinion of the value of real property under § 28-51-302.

(B) A broker's price opinion or a market analysis issued in this state in connection with an interstate transaction or a federally related transaction shall not contain the term "appraisal" or the term "market value".

(C) The prohibition in subdivision (a)(1)(B) of this section does not apply to an intrastate, nonfederally related broker's price opinion or market analysis.

(2)(A) The listing price, purchase price, market analysis, or broker's price opinion may be treated as an appraisal solely for the purposes of § 28-51-302.

(B) A real estate broker who provides testimony regarding an opinion of the value of real property that may be treated as an appraisal for purposes of § 28-51-302 shall nonetheless be exempt from registration as an appraiser under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.

(b)(1)(A) The Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., does not apply to any state, county, or municipal public officer or employee while the officer or employee is performing appraisal or appraisal-related duties as the officer or employee.

(B) Appraisals performed by state, county, or municipal officers or employees outside the scope of their employment are subject to the provisions of the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.

(2) The Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., does not apply to:

(A) Persons performing appraisals as officers or staff of a bank, savings and loan, or credit union;

(B) Company foresters in the ordinary course of their duties; or

(C) Staff appraisers performing ad valorem tax appraisals for county assessors or employees of contractors performing county-wide reappraisals.

(c)(1) Except as provided in subsection (b) of this section, appraisers, when providing appraisal reports or appraisal services in nonfederally related transactions, who become licensed or certified by the Arkansas Appraiser Licensing and Certification Board are subject to the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., in all matters involving appraisal services, including transactions below the federally established threshold.

(2) If an appraiser does not make appraisals for any federal agency, any federally insured lending institution, the Federal Housing Admin-

istration, the Federal National Mortgage Association, the Federal Deposit Insurance Corporation, the United States Bankruptcy Courts, the Federal Highway Administration, the Federal Aviation Administration, the United States Department of Veterans Affairs, the Internal Revenue Service, or any other federal or quasi-federal authority, including appraisal work that is distributed via interstate commerce or appraisals involving transactions above the threshold established by a federal financial institutions regulatory agency, the appraiser is only required to be a state-registered appraiser under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.

(d) The Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., shall not preclude any person from testifying as an expert witness in any judicial proceeding in which the value of real estate is in issue unless that person holds himself or herself out as a practicing real estate fee appraiser.

(e) Nothing in the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., prohibits any person who is licensed to practice in this state under any law from engaging in the practice for which he or she is licensed.

History. Acts 1991, No. 416, §§ 6, 7; 1991, No. 541, §§ 6, 7; 1993, No. 413, § 3; 1993, No. 1270, § 2; 2001, No. 1256, § 3; 2005, No. 922, § 1; 2007, No. 540, § 1; 2009, No. 628, § 6.

Amendments. The 2005 amendment inserted the subdivision (A) designation in (a)(1) and (a)(2) and made related changes: added “or” at the end of present (a)(1)(A); added (a)(1)(B) and (a)(2)(B); and rewrote present (a)(2)(A).

The 2007 amendment substituted “Except when an interstate transaction or a

federally related transaction is involved, this chapter does” for “This chapter shall” in (a)(1)(A); inserted “written report called a” in (a)(1)(A)(i); added (a)(1)(B) and (C); and made related changes.

The 2009 amendment substituted “The Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.,” for “this chapter” throughout the section; and made related and minor stylistic changes.

17-14-105. Right and privileges of licensed or registered appraiser.

(a) A state-registered or state-licensed appraiser as defined in § 17-14-103 may appraise real property for compensation if the use of a state-certified appraiser is not required under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., or by federal or state law, rule, or policy.

(b) An appraiser shall not sign an appraisal report or be cited within the report as having provided “significant real property appraisal assistance” in the development of the appraisal without having been state-registered, state-licensed, or state-certified.

History. Acts 1991, No. 416, § 7; 1991, No. 541, § 7; 2001, No. 1256, § 4; 2009, No. 628, § 7.

Amendments. The 2009 amendment substituted "The Arkansas Appraiser Li-

censing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.," for "this chapter" in (a), and made a related change.

17-14-106. Absence of liability.

(a) Financial institutions or affiliates hiring the services of appraisers registered, licensed, or certified by the Arkansas Appraiser Licensing and Certification Board in nonfederally related transactions, including transactions below the federally established threshold, shall not be liable to any party asserting damages due to the alleged actions of the appraiser, nor shall the financial institution or affiliate be subject to any requirements to report to the board regarding such transactions other than as may be required by the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., and the rules promulgated by the board.

(b) This section does not limit the investigative or subpoena powers of the board.

History. Acts 1993, No. 1270, § 3; 2001, No. 1256, § 5; 2009, No. 628, § 8.

Amendments. The 2009 amendment, in (a), substituted "The Arkansas Appraiser Licensing and Certification Act,

§ 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.," for "this chapter" and "rules" for "regulations," and made related and minor stylistic changes.

SUBCHAPTER 2 — ARKANSAS APPRAISER LICENSING AND CERTIFICATION BOARD

SECTION.

17-14-201. Composition — Membership — Chair.

17-14-202. Powers and duties — Reporting standards — Qualification standards.

17-14-203. Powers and duties — In general.

SECTION.

17-14-204. Meetings, quorum, and voting.

17-14-205. Hearings — Review — Access to records.

17-14-206. Complaints and disciplinary procedures.

Effective Dates. Acts 1997, No. 250, § 258; Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup

act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by

the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2009, No. 628, § 20; Jan. 1, 2010.
Effective date clause provided: “This act takes effect January 1, 2010.”

17-14-201. Composition — Membership — Chair.

(a) There is hereby created the Arkansas Appraiser Licensing and Certification Board, to be composed of ten (10) members as follows:

(1)(A) Seven (7) practicing appraisers, provided that at all times at least five (5) of the appraiser members of the board shall be state-certified appraisers and two (2) shall be state-licensed appraisers. Failure to maintain this qualification shall result in automatic disqualification from this board.

(B) Of the seven (7) practicing appraiser members, no more than two (2) shall reside in the same congressional district of the four (4) Arkansas congressional districts as they now exist.

(C) Additionally, the seven (7) practicing appraiser members shall be representative of the various disciplines found in the appraisal profession, including without limitation residential appraisal, commercial and industrial appraisal, forestry and timberland appraisal, rural appraisal, and any other appraisal discipline that may be affected by the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.;

(2) One (1) board member shall be a representative of financial institutions familiar with the appraisal process;

(3) One (1) senior citizen representative; and

(4) One (1) consumer representative.

(b)(1)(A) The Governor shall appoint the members of the board and may remove a member for cause.

(B) The Governor may, at his or her discretion, request additional names to be submitted from organizations mentioned in this subchapter eligible to fill appointments to this board.

(2)(A)(i) State chapters of national appraisal organizations which are members of the Appraisal Foundation or its successor, plus the Arkansas Chapter of the Association of Consulting Foresters of America, Inc., should each submit to the Governor at least annually, on or before January 15 of each calendar year, a list of two (2) names of members of their respective organizations.

(ii) Two (2) appraiser board members may be appointed by the Governor at large.

(B) Any appraiser vacancies shall be filled from these lists with the exception of the Governor’s two (2) at-large appointments.

(C) At least five (5) real estate appraiser members appointed to the board shall be members in good standing of one (1) of the Appraisal Foundation member organizations or the Association of Consulting Foresters of America, Inc., requiring qualified appraisal experience, education, and testing in order to become a designated member in

addition to adherence to standards of professional practice in order to retain such a designation. The nominees must be from the Appraisal Foundation members having operating chapters headquartered within the State of Arkansas.

(D) No practicing appraisers shall be denied the opportunity to submit their names for consideration to fill either of the two (2) at-large appointments to this board based solely upon membership or lack of membership in any particular appraisal organization.

(3) The Arkansas Bankers Association, the Arkansas League of Savings Institutions, the Arkansas Association of Bank Holding Companies, the Arkansas Independent Bankers Association, the Mortgage Bankers Association of Arkansas, and the Arkansas Credit Union League should each submit a list of two (2) names, annually, on or before January 15 of each calendar year, to the Governor, and the financial member shall be appointed and the vacancy filled from the lists of names provided.

(c)(1)(A) The term of each appraiser board member shall be three (3) years.

(B) The financial member representative, the senior citizen representative, and the consumer representative shall have three-year terms, and the Governor may reappoint these positions biennially.

(2) Upon expiration of their terms, members of the board shall continue to hold office until the appointment and qualification of their successors.

(3) No person shall serve as a member of the board for more than two (2) consecutive terms.

(d) The members of the board will select a state-certified appraiser chair.

(e) Each member of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1991, No. 416, §§ 3, 5; 1991, No. 541, §§ 3, 5; 1997, No. 250, § 123; 2001, No. 159, §§ 1, 2; 2009, No. 628, § 9.

A.C.R.C. Notes. As enacted, subdivision (a)(1)(A) provided that at least five (5) of the seven practicing appraisers would be or become state certified appraisers and two (2) would be or become state licensed appraisers by the effective date of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Subdivision (a)(1) further provided that the failure to meet this qualification would result in disqualification from the board.

As enacted, subdivision (b)(3) began "The Governor shall appoint one (1) financial institution member to the board."

As enacted subsection (d), also provided: "The original chairman shall

become, by the effective date of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, a state certified appraiser."

The effective date of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, for the use of certified or licensed appraisers only, is July 1, 1991 but may be extended until December 31, 1991, pursuant to 12 U.S.C. § 3348(a).

Acts 1991, Nos. 416 and 541, § 3, in part, provided: "The Governor may appoint from the lists submitted to him by the organizations which are members of the Appraisal Foundation, the Arkansas Bankers Association, Arkansas League of Savings Institutions, the Arkansas Association of Bank Holding Companies, the Arkansas Independent Bankers Association, the Arkansas Mortgage Bankers As-

sociation, the Arkansas Credit Union League, the Association of Consulting Foresters of America, Inc., and the Ouachita Society of American Foresters, Arkansas Division, an organizational subcommittee to be composed of two (2) members of each of their state chapters plus two (2) members from lists submitted from appraisal organizations not currently members of the Appraisal Foundation. The subcommittee will assist the board in the duties required in the implementation of this act. These subcommittee members are to serve for a period of one (1) year without reimbursement and this subcommittee will not be reappointed after the initial organizational period.”

Acts 1991, Nos. 416 and 541, § 3 provided, in part, that initially, the Governor would appoint five (5) appraiser members to the board from lists submitted to him by state chapters of national appraisal

organizations which are members of the Appraisal Foundation, or its successor, plus the Arkansas Chapter of the Association of Consulting Foresters of America, Inc., provided that not more than two (2) members represent any one of the national organizations which are members of the Appraisal Foundation or the Association of Consulting Foresters of America, Inc.

Acts 1991, Nos. 416 and 541, § 3 further provided that of the members of the Arkansas Appraisers Licensing and Certification Board, four (4) would be appointed for three (3) years, and three (3) would be appointed for two (2) years.

Amendments. The 2009 amendment, in (a)(1)(C), substituted “The Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.” for “this chapter,” and made a minor stylistic change.

17-14-202. Powers and duties — Reporting standards — Qualification standards.

(a) The Arkansas Appraiser Licensing and Certification Board may establish, maintain, report, and periodically update meaningful qualification standards for state-licensed and state-certified appraisers practicing in the State of Arkansas, including testing, experience, and educational requirements that:

- (1) Are adequate to demonstrate knowledge and competency; and
- (2) Will further demonstrate the continued compliance with:

(A) All applicable federal law and regulations, including Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and related requirements of the federal financial institutions regulatory agencies; and

(B) The minimum standards and qualifications as promulgated by the Appraisal Standards Board and the Appraiser Qualifications Board of the Appraisal Foundation and as approved by the Appraisal Subcommittee.

(b) The Arkansas Appraiser Licensing and Certification Board may adopt, maintain, report, and periodically update minimum reporting standards for state-registered, state-licensed, and state-certified appraisers practicing in the State of Arkansas. The reporting standards shall:

(1) Be equivalent to the “Uniform Standards of Professional Appraisal Practice” as promulgated by the Appraisal Standards Board of the Appraisal Foundation; and

- (2) At all times seek compliance with:

(A) All applicable federal law and regulations, including Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of

1989, and related requirements of the federal financial institutions regulatory agencies; and

(B) The minimum standards as promulgated by the Appraisal Standards Board of the Appraisal Foundation and as approved by the Appraisal Subcommittee.

History. Acts 1991, No. 416, § 4; 1991, No. 541, § 4; 2001, No. 1256, § 6.

U.S. Code. Title XI of the Financial Institutions Reform, Recovery, and En-

forcement Act of 1989, referred to in this section, is codified as 12 U.S.C. §§ 3310 and 3331 et seq.

17-14-203. Powers and duties — In general.

In accordance with these general powers and duties, the Arkansas Appraiser Licensing and Certification Board shall:

(1) Perform all duties and functions necessary to carry out this chapter;

(2) Receive applications for registering, licensing, and certification;

(3) Establish administrative procedures for processing applications;

(4)(A) Approve and issue registration, licenses, and certificates to qualified applicants or disapprove applications for registering, licensing, and certification for applicants who do not meet the minimum requirements as prescribed in this chapter.

(B) All application materials and records submitted to the Arkansas Appraiser Licensing and Certification Board shall be retained by the Arkansas Appraiser Licensing and Certification Board;

(5) Maintain a roster of the names, addresses, and telephone numbers of all persons licensed and certified under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., and, in accordance with sections 1103(a)(3) and 1109(a)(1) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, shall submit this roster annually to the Appraisal Subcommittee. This roster may be published and periodically updated and provided to all interested parties at cost;

(6)(A) Establish by rule the minimum examination, education, experience, and continuing education requirements for state-registered, state-licensed, and state-certified appraisers.

(B)(i) The criteria for a state-registered appraiser shall be less rigorous than the criteria for a state-licensed appraiser.

(ii) The criteria for a state-licensed appraiser shall be less rigorous than the criteria for a state-certified appraiser. However, the criteria will ensure that licensed appraisers have sufficient experience and training to perform appraisals for transactions within and in compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(C) These rules shall at all times be equivalent to the minimum appraiser-qualification criteria as promulgated by the Appraiser Qualifications Board of the Appraisal Foundation for state-licensed and state-certified appraisers performing federally related transactions.

(D) With respect to examinations, these rules shall at all times require minimum examination contents that are equivalent to the national uniform examination content as promulgated by the Appraiser Qualifications Board of the Appraisal Foundation and shall provide for the selection and utilization of a testing service acceptable to the Appraiser Qualifications Board of the Appraisal Foundation.

(E)(i) Every application for registering, licensing, and certification shall be accompanied by an application and examination fee, as applicable, that the Arkansas Appraiser Licensing and Certification Board may establish by regulation.

(ii) However, the Arkansas Appraiser Licensing and Certification Board, at its discretion, may direct each applicant to pay the actual cost of the examination fee directly to a testing service engaged by the Arkansas Appraiser Licensing and Certification Board to administer the examination.

(F) The examination fee for registering, licensing, or certification shall not exceed one hundred dollars (\$100).

(G) The total annual resident registering, licensing, certification, and application fees established by the Arkansas Appraiser Licensing and Certification Board shall not exceed three hundred dollars (\$300), excluding fees for applicable examination and federal pass-through fees.

(H) Courses, schools, seminars, and any other educational programs must be recognized by the Arkansas Appraiser Licensing and Certification Board as acceptable to satisfy registration, licensing, and certification standards and continuing education requirements under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.;

(7)(A) Establish administrative procedures for disciplinary proceedings conducted under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.

(B) The administrative procedures shall include provisions for the suspension and revocation of registration, licenses, and certificates and the enforcement of civil penalties concurrent with existing statutes regarding civil procedures;

(8) Subpoena and issue subpoena duces tecum and to bring before it any person in this state, and to take testimony by deposition, in the same manner as prescribed by law in judicial proceedings in the courts of this state or to require production of any records relevant to any inquiry or hearing by the Arkansas Appraiser Licensing and Certification Board;

(9) Recommend procedures necessary to assure the ready availability to appraisers in the state of adequate and reliable information regarding property prices and the terms and conditions of real estate and real property transactions and related financing;

(10) Establish administrative procedures for the setting, charging, and collecting of fees necessary for the operation of the Arkansas

Appraiser Licensing and Certification Board and to concurrently collect and submit to the proper agency as prescribed under section 1109(a)(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and any other related federal law, any additional fees that may from time to time be required to be paid by appraisers whose practices include the appraisal of properties included in federally related transactions; and

(11) Be authorized to adopt and enforce such administrative rules as may be necessary to comply with state law and federal law with specific reference to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 as it exists today and as it may be amended and adopted by the Appraisal Subcommittee.

History. Acts 1991, No. 416, § 4; 1991, No. 541, § 4; 2001, No. 1256, § 7; 2009, No. 628, § 10.

Amendments. The 2009 amendment substituted “The Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.” for “this chapter” in (5), (6)(H), and (7)(A); substituted “rule” for “regulation” or variant in (6)(A), (6)(C), and (6)(D); subdivided (7); deleted “and regu-

lations” following “rules” in (11); and made related and minor stylistic changes.

U.S. Code. Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in this section, is codified as 12 U.S.C. §§ 3310 and 3331 et seq.

Sections 1103(a)(3) and 1109(a)(1) and (a)(2) of the act are codified as 12 U.S.C. §§ 3332(a)(3) and 3338(a)(1) and (a)(2), respectively.

17-14-204. Meetings, quorum, and voting.

(a) The Arkansas Appraiser Licensing and Certification Board shall meet not less frequently than twice each calendar year to conduct its business.

(b) Places of future meetings shall be decided by the vote of members at meetings.

(c) Written notice shall be given to each member of the time and place of each meeting of the board at least ten (10) days before the scheduled date of the meetings.

(d) An administrative secretary shall be present at all meetings of the board and shall record the minutes of all meetings, the record of which shall be made a permanent part of the records of the board.

(e) A quorum of the board shall be six (6) members, provided that four (4) must be state-licensed or state-certified appraisers. No binding decisions or regulatory changes may be made by the board in the absence of a quorum.

History. Acts 1991, No. 416, § 5; 1991, No. 541, § 5; 2001, No. 159, § 3.

17-14-205. Hearings — Review — Access to records.

(a) In fulfilling its duties under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., the Arkansas Appraiser Licensing and Certification

Board shall comply with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and any person aggrieved by any rule or other actions of the board for which an appeal is not provided for in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., may appeal to the Pulaski County Circuit Court.

(b) Disciplinary hearings conducted by the board for the purpose of determining whether to levy civil penalties under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., and for the purpose of determining whether to revoke or suspend any license or certificate issued under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., shall not be deemed open public meetings but shall be executive sessions conducted as provided for in the Freedom of Information Act of 1967, § 25-19-101 et seq.

(c) Sample appraisals and other work papers submitted to the board as partial fulfillment of the requirements for licensure or certification under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., shall not be deemed public records under the Freedom of Information Act of 1967, § 25-19-101 et seq.

History. Acts 1991, No. 416, §§ 11, 12; 1991, No. 541, §§ 11, 12; 2009, No. 628, § 11.

Amendments. The 2009 amendment substituted "The Arkansas Appraiser Li-

censing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.," for "this chapter" throughout the section; and made related changes.

CASE NOTES

Cited: Arkansas Appraiser Licensing & Certification Bd. v. Fletcher, 326 Ark. 628, 933 S.W.2d 789 (1996).

17-14-206. Complaints and disciplinary procedures.

(a) Upon its own motion or upon written complaint of any person and after notice and hearing as prescribed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the Arkansas Appraiser Licensing and Certification Board may suspend or revoke the registration, license, or certification of any registrant, licensee, or certificate holder and issue a fine up to the amount of one thousand dollars (\$1,000) per violation occurrence or take any other appropriate disciplinary action for:

(1) Violation of any provision of the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.;

(2) Falsifying any application for licensure or certification or otherwise providing any false information to the board;

(3)(A) Conviction in any jurisdiction of any misdemeanor involving moral turpitude or of any felony.

(B) A plea of nolo contendere or no contest shall be considered a conviction for the purposes of this section;

(4) Any actions demonstrating untrustworthiness, incompetence, dishonesty, gross negligence, material misrepresentation, fraud, or unethical conduct in any dealings subject to the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.;

(5) Adjudication of insanity;

(6) Use of advertising or solicitation that is false, misleading, or is otherwise deemed unprofessional by the board;

(7) Employing directly or indirectly any unlicensed person to perform any actions subject to the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.;

(8) Habitual or excessive use of intoxicants or illegal drugs; or

(9) Failure to meet continuing education requirements within the proper time period.

(b) Except in cases in which a licensee, registrant, or certificate holder has obtained a license by false or fraudulent representation, the board shall not investigate the actions of or conduct any disciplinary hearing regarding any licensee, registrant, or certificate holder unless the complaint is filed or the investigation is initiated within three (3) years from the date of the actions complained of or concerning which an investigation is initiated.

History. Acts 1993, No. 413, § 4; 2001, No. 1256, § 8; 2005, No. 278, § 1; 2009, No. 628, § 12.

Amendments. The 2005 amendment added (b).

The 2009 amendment substituted “The Arkansas Appraiser Licensing and Certi-

fication Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.” for “this chapter” in (a)(1) and (a)(7), and for “this chapter or these regulations” in (a)(4).

CASE NOTES

ANALYSIS

Appraisal Report.
Evidence.
Procedure.

Appraisal Report.

Appraisal report held to violate this section. *Arkansas Appraiser Licensing & Certification Bd. v. Fletcher*, 326 Ark. 628, 933 S.W.2d 789 (1996).

Evidence.

Order suspending a residential appraiser’s license for six months, to be followed

by a six-month probationary period, was supported by substantial evidence under subdivision (a)(4) of this section where the appraiser admitted to violating the Uniform Standards of Professional Appraisal Practice in at least one instance by not analyzing the sales contract on one of the subject properties. The appraiser also agreed that pictures of at least one of the comparables appeared to support the conclusion that the comparable was in superior condition to the subject property. *Chandler v. State Appraiser Licensing & Cert. Bd.*, 101 Ark. App. 10, 269 S.W.3d 827 (2007).

Procedure.

Order suspending a residential appraiser's license for six months, to be followed by a six-month probationary period, was upheld where this section allowed the Arkansas Appraiser Licensing & Certification Board, after notice and a hearing,

to take disciplinary action against an appraiser on its own motion, with or without a "proper" complaint. The Board's action was not based on unlawful procedure. *Chandler v. State Appraiser Licensing & Cert. Bd.*, 101 Ark. App. 10, 269 S.W.3d 827 (2007).

SUBCHAPTER 3 — LICENSING RESTRICTIONS

SECTION.

- 17-14-301. Business entities — Eligibility for licensing.
- 17-14-302. License required — Membership in other organizations.
- 17-14-303. Unlicensed persons — Federally and nonfederally related transactions.
- 17-14-304. Use of terms.
- 17-14-305. Compliance with uniform standards and code of eth-

SECTION.

- ics — Seals — Licensing and certification documents.
- 17-14-306. Additional licenses — Non-residents.
- 17-14-307. Minimum qualifying requirements for registered appraiser.
- 17-14-308. Violation of law — Civil penalties, injunctions, venue.

Effective Dates. Acts 2009, No. 628, § 20: Jan. 1, 2010. Effective date clause provided: "This act takes effect January 1, 2010."

17-14-301. Business entities — Eligibility for licensing.

A registration, license, or certificate shall not be issued under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., to a firm, corporation, partnership, group, or other business entity.

History. Acts 1991, No. 416, § 9; 1991, No. 541, § 9; 2001, No. 1256, § 9; 2009, No. 628, § 13.

Amendments. The 2009 amendment substituted "The Arkansas Appraiser Li-

censing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.," for "this chapter," and made a related change.

17-14-302. License required — Membership in other organizations.

(a) On or after December 31, 2001, it shall be a Class B misdemeanor for any individual to perform an appraisal or provide appraisal services as defined in the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., without holding a registration, license, or certificate except as provided in § 17-14-104.

(b) A person shall not be excluded from obtaining a registration, license, or certification based solely upon membership or lack of membership in any particular appraisal organization.

History. Acts 1991, No. 416, § 7; 1991, No. 541, § 7; 2001, No. 1256, § 10; 2005, No. 1994, § 472; 2009, No. 628, § 14.

Amendments. The 2005 amendment substituted “a Class B misdemeanor” for “unlawful” in (a).

The 2009 amendment substituted “The Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.” for “this chapter” in (a), and made related and minor stylistic changes.

17-14-303. Unlicensed persons — Federally and nonfederally related transactions.

(a) It is a Class B misdemeanor for any person who is not licensed or certified under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., to perform appraisal services as defined in the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., in connection with a federally related transaction.

(b) An appraiser who does not hold an appraiser’s classification that permits the performance of a particular appraisal assignment for use in federally related transactions must include in such an appraisal report a statement that the appraisal may not be eligible for use in a federally related transaction.

History. Acts 1991, No. 416, § 10; 1991, No. 541, § 10; 2001, No. 1256, § 11; 2005, No. 1994, § 472; 2009, No. 628, § 15.

A.C.R.C. Notes. As enacted, this section began “After July 1, 1991, or such later date as established by the Appraisal Subcommittee.”

Acts 1991, Nos. 416 and 541, in § 10, in part, provided: “The adoption of reporting standards in conformance with the Uniform Standards of Professional Appraisal Practice and the related ethics provisions, shall be effective immediately following the signing of this act into law by the Governor. Additionally, all real estate ap-

praisals and reports as defined herein, conducted as part of a federally related transaction as defined herein, shall be written reports, effective immediately following the signing of this act into law by the Governor.”

Amendments. The 2005 amendment substituted “a Class B misdemeanor” for “unlawful” in (a).

The 2009 amendment substituted “The Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.” for “this chapter” twice in (a), and made related and minor stylistic changes.

17-14-304. Use of terms.

(a) The terms “certified real property appraiser”, “certified real estate appraiser”, and “certified appraiser” shall only be used to refer to individuals who hold a current certificate and shall not be used in connection with or as part of the name or signature of an individual, firm, partnership, corporation, group, or other business entity, or anyone other than an individual holder of the certificate.

(b) An appraiser practicing or providing appraisal services in this state as defined in § 17-14-103 may not use the term “registered”, “certified”, or “licensed” in conjunction with his or her appraisal practice, unless he or she holds a valid registration, license, or certification issued under the the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.

(c) The terms “licensed real estate appraiser”, “licensed real property appraiser”, and “licensed appraiser” shall only be used to refer to an individual who holds a current license and shall not be used in connection with or as part of the name or signature of an individual, firm, corporation, or group or in a manner that may be interpreted as referring to a firm, partnership, corporation, group, or other business entity, or anyone other than an individual holder of the license.

(d) A person other than a state-registered appraiser, state-licensed appraiser, or state-certified appraiser shall not assume or use that title or any title, designation, or abbreviation likely to create the impression of registration, licensing, or certification as an appraiser by this state.

(e) A person who is not licensed or certified under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., shall not describe or refer to any appraisal report, written or oral, or other evaluation of real estate covered under the activities of appraisers by the term “registered”, “licensed”, “certified”, or any other similar term that may be construed to imply qualification or competency recognized by the state.

History. Acts 1991, No. 416, § 9; 1991, No. 541, § 9; 2001, No. 1256, § 12; 2009, No. 628, § 16.

Amendments. The 2009 amendment substituted “The Arkansas Appraiser Li-

censing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.” for “this chapter” in (b) and (e), and made related and minor stylistic changes.

17-14-305. Compliance with uniform standards and code of ethics — Seals — Licensing and certification documents.

(a)(1) Each state-registered appraiser, each state-licensed appraiser, and each state-certified appraiser shall comply with the Uniform Standards of Professional Appraisal Practice and Code of Ethics adopted by the Arkansas Appraiser Licensing and Certification Board and shall authenticate all written appraisal reports with a seal that shall indicate the registration, license, or certification number.

(2) The seal and number shall also be used in all statements of qualifications, contracts, or other instruments used by the registration, license, or certificate holder when reference is made to his or her status as a state-registered appraiser, state-licensed appraiser, or a state-certified appraiser.

(b) Registration, license, and certificate documents, licenses, certificates, seals, and pocket cards shall remain the property of the state, and, upon any suspension, revocation, or other termination of a

registration, license, or certification under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., the individual holding the related documents shall immediately return the documents to the board.

History. Acts 1991, No. 416, § 9; 1991, No. 541, § 9; 1993, No. 413, § 5; 2001, No. 1256, § 13; 2009, No. 628, § 17.

Amendments. The 2009 amendment substituted “The Arkansas Appraiser Li-

censing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.” for “this chapter” in (b), and made a related and a minor stylistic change.

CASE NOTES

Cited: Arkansas Appraiser Licensing & Certification Bd. v. Fletcher, 326 Ark. 628, 933 S.W.2d 789 (1996).

17-14-306. Additional licenses — Nonresidents.

(a)(1) Every applicant for registration, licensure, or certification under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., who is not a resident of this state shall submit with the application for registration, licensure, or certification an irrevocable consent that service of process upon him or her may be made by delivery of the process to the Secretary of State if, in an action against the applicant in a court of this state arising out of the applicant’s activities as a state-registered appraiser, state-licensed appraiser, or state-certified appraiser, the plaintiff cannot effect personal service upon the applicant.

(2) A nonresident of this state who has complied with this provision may obtain a license or certification as a state-licensed appraiser or a state-certified appraiser by complying with the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., relating to state-registered appraisers, state-licensed appraisers, or state-certified appraisers, including the payment of a fee.

(b)(1) If, in the determination by the Arkansas Appraiser Licensing and Certification Board, another state is deemed to have substantially equivalent licensing and certification requirements, an applicant who is licensed or certified under the laws of the other state may obtain a temporary or nonresident license or certificate as a state-licensed appraiser or a state-certified appraiser in this state upon such terms and conditions as may be determined by the board.

(2) An appropriate fee is to be charged.

History. Acts 1991, No. 416, § 8; 1991, No. 541, § 8; 1993, No. 413, § 6; 2001, No. 1256, § 14; 2009, No. 628, § 18.

Amendments. The 2009 amendment subdivided (a), substituted “The Arkansas

Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.” for “this chapter” in (a)(1) and (a)(2), and made related and minor stylistic and punctuation changes.

17-14-307. Minimum qualifying requirements for registered appraiser.

In order to qualify as a state-registered appraiser, an applicant must:

(1) Make application to the Arkansas Appraiser Licensing and Certification Board on approved forms which shall include an affidavit that states that the appraiser has read and understands:

(A) The current edition of the Uniform Standards of Professional Appraisal Practice;

(B) The board's statutes; and

(C) The board's rules and regulations;

(2) Attest in a statement to the verification of tenure and scope of practice as a fee appraiser making independent appraisal assignments; and

(3) Meet any additional requirements which may from time to time be adopted by the board under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 2001, No. 1256, § 15.

17-14-308. Violation of law — Civil penalties, injunctions, venue.

(a)(1) It is unlawful for a person not registered, licensed, or certified under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., to perform an act or advertise to perform an act for which registration, licensure, or certification is required.

(2) A person is guilty of a Class A misdemeanor if the person:

(A) Acts as an appraiser within the meaning of this chapter without an appraiser classification;

(B)(i) With an interest in a real estate transaction involving an appraisal, improperly influences or attempts to improperly influence the development, reporting, result, or review of a real estate appraisal through intimidation, coercion, extortion, bribery, blackmail, threat of nonpayment or withholding payment for services, or threat of exclusion from future appraisal work.

(ii) Subdivision (a)(2)(B)(i) of this section does not prohibit a person from:

(a) Requesting an appraiser to:

(1) Consider additional information concerning the real estate appraisal;

(2) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(3) Correct errors in the appraisal report; or

(b) Withholding payment for an appraisal based upon a bona fide dispute concerning the appraiser's compliance with the appraisal standards adopted by the Arkansas Appraiser Licensing and Certification Board under this chapter.

(iii) A violation of this subdivision (a)(2)(B) is a ground for discipline against a person holding a license, certificate, or registration under this chapter; or

(C) Violates any other provision of this chapter.

(b)(1) Upon application by the board, a court may grant an injunction, restraining order, or other order as may be appropriate to enjoin a person from:

(A) Offering to engage or engaging in the performance of any acts or practices for which a registration, certificate, or license is required by the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., upon a showing that the acts or practices were performed or offered to be performed without a registration, license, or certificate;

(B) Engaging in any practice or business authorized by a certificate, license, or registration issued under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq., upon a showing that the holder of the certificate, license, or registration presents a substantial probability of serious danger to the health, safety, or welfare of any resident of this state or client of the certificate holder or licensee; or

(C) Violating subdivision (a)(2) of this section.

(2) Any person cosigning an appraisal with a state-registered, state-licensed, or state-certified appraiser becomes subject to the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.

(c) An action brought under this section shall be commenced in the county in which the conduct occurred, in the county in which the defendant resides, or in Pulaski County.

(d) An action brought under this section shall be in addition to and not in lieu of any penalty provided by § 17-14-206 and may be brought concurrently with any other action to enforce the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.

History. Acts 2001, No. 1256, § 16; 2009, No. 413, § 1; 2009, No. 628, § 19.

Amendments. The 2009 amendment by No. 413, in (a), inserted “or advertise to perform an act” in (a)(1), and rewrote (a)(2); inserted (b)(1)(C); and made minor stylistic changes.

The 2009 amendment by No. 628 subdivided (a); substituted “The Arkansas Appraiser Licensing and Certification Act,”

praiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.” for “this chapter” throughout the section; inserted “§ 17-14-201 et seq., and § 17-14-301 et seq.” in (b)(1)(A) and (b)(1)(B); and made related and minor stylistic changes.

SUBCHAPTER 4 — APPRAISAL MANAGEMENT COMPANY REGISTRATION ACT

SECTION.

17-14-401. Short title.

SECTION.

17-14-402. Definitions.

SECTION.

- 17-14-403. Registration of appraisal management companies required.
- 17-14-404. Rulemaking authority.
- 17-14-405. Requirements for registration.
- 17-14-406. Fees and renewals.
- 17-14-407. Registrant responsibilities and duties.

SECTION.

- 17-14-408. Prohibited activities.
- 17-14-409. Registry of applicants and roster.
- 17-14-410. Disciplinary authority, enforcement, and hearings.
- 17-14-411. Injunctive relief — Criminal penalty.
- 17-14-412. Applicability.

Effective Dates. Acts 2009, No. 628, § 20: Jan. 1, 2010. Effective date clause provided: “This act takes effect January 1, 2010.”

17-14-401. Short title.

This subchapter shall be known and may be cited as the “Appraisal Management Company Registration Act”.

History. Acts 2009, No. 628, § 1.

17-14-402. Definitions.

As used in this subchapter:

(1) “Appraisal management company” means a person that performs the actions necessary to administer a network of state-licensed appraisers to fulfill requests for appraisal management services on behalf of a client, including without limitation:

- (A) Recruiting appraisers;
- (B) Contracting with appraisers to perform appraisal services;
- (C) Negotiating fees with appraisers;
- (D) Receiving appraisal orders and appraisal reports;
- (E) Submitting appraisal reports received from appraisers to the company’s clients; and
- (F) Providing related administrative and clerical duties;

(2) “Appraisal management services” means the conduct of business by telephone, by electronic means, by mail, or in person directly or indirectly for compensation or other pecuniary gain or in the expectation of compensation or other pecuniary gain to:

- (A) Solicit, accept, or offer to accept a request for appraisal services; or
- (B) Employ or contract with a licensed or certified appraiser to perform appraisal services;

(3) “Appraisal services” means the practice of developing an opinion of the value of real property in conformance with the minimum reporting standards under § 17-14-202(b);

(4) “Appraiser” means an individual licensed under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-

14-201 et seq., and § 17-14-301 et seq., who for a fee or other consideration develops and communicates a real estate appraisal or otherwise gives an opinion of the value of real estate or any interest in real estate;

(5) “Appraiser panel” means a group of independent appraisers that have been selected by an appraisal management company to perform appraisal services for the appraisal management company;

(6) “Client” means a person that contracts with or otherwise enters into an agreement with an appraisal management company for the performance of appraisal services;

(7) “Controlling person” or “managing principal” means an individual employed, appointed, or authorized by an appraisal management company to contract with clients or independent appraisers for the performance of appraisal services;

(8) “Person” means an individual, a partnership, a limited liability company, a limited partnership, a corporation, an association, or other organization; and

(9) “Registrant” means an appraisal management company or person that is registered under this subchapter.

History. Acts 2009, No. 628, § 1.

17-14-403. Registration of appraisal management companies required.

A person shall not act as an appraisal management company or perform appraisal management services in this state unless registered by the Arkansas Appraiser Licensing and Certification Board.

History. Acts 2009, No. 628, § 1.

17-14-404. Rulemaking authority.

The Arkansas Appraiser Licensing and Certification Board may adopt rules to implement, administer, and enforce this subchapter, including without limitation to prescribe:

- (1) Forms and procedures for submitting information to the board;
- (2) Standards of practice for a person registered under this subchapter; and
- (3) Standards for the operation of appraisal management companies.

History. Acts 2009, No. 628, § 1.

17-14-405. Requirements for registration.

(a) Before acting or offering to act as an appraisal management company in this state, a person shall make written application to the Arkansas Appraiser Licensing and Certification Board for registration accompanied by the fee and bond established by the board.

(b) The application shall include without limitation the following information:

(1) The name, business address, and telephone contact information of the person seeking registration;

(2)(A) If the applicant is a domestic organization, the information required by § 4-20-105(a) to designate an agent for service of process; or

(B)(i) If the applicant is a foreign organization, documentation that the foreign organization is authorized to transact business in this state and has appointed an agent for service of process by submitting a copy of:

(a) The company's filing with the Secretary of State appointing an agent for service of process under § 4-20-112; and

(b) A certificate of authority issued by the Secretary of State.

(ii) A foreign organization's failure to comply with subdivision (b)(2)(B)(i) of this section may result in the rejection of the application;

(3) The name, address, and contact information of any person that owns ten percent (10%) or more of the appraisal management company;

(4) The name, address, and contact information of a controlling person or a managing principal;

(5) A certification that the person:

(A) Has a system and process in place to verify that a person being added to the appraiser panel of the appraisal management company holds a license in good standing in this state under the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.;

(B) Has a system in place to review the work of all independent appraisers that are performing appraisal services for the appraisal management company on a periodic basis to ensure that the appraisal services are being conducted in accordance with the minimum reporting standards under § 17-14-202(b); and

(C) Maintains a detailed record of each request for appraisal services that it receives and the independent appraiser that performs the appraisal services for the appraisal management company; and

(6) Any other information required by the board.

(c) The board shall issue a certificate of registration to an applicant authorizing the applicant to act or offer to act as an appraisal management company in this state upon:

(1) Receipt of a properly completed application;

(2) Payment of the required fee;

(3) Posting of a bond; and

(4) Determination by the board that the activities of the applicant will be directed and conducted by persons of good moral character.

(d)(1) If the board finds that there is substantial reason to deny the application for registration, the board shall notify the applicant that the application has been denied and shall afford the applicant an opportunity for a hearing before the board to show cause why the application should not be denied.

(2) All proceedings concerning the denial of a certificate of registration shall be governed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(e) The acceptance by the board of an application for registration does not constitute the approval of its contents or waive the authority of the board to take disciplinary action under this subchapter.

History. Acts 2009, No. 628, § 1.

17-14-406. Fees and renewals.

(a) The Arkansas Appraiser Licensing and Certification Board shall establish by rule a filing fee not to exceed five hundred dollars (\$500) to be paid by each appraisal management company seeking registration under this subchapter.

(b)(1) In addition to the filing fee, each applicant for registration shall post with the board and maintain a surety bond in the amount of twenty thousand dollars (\$20,000).

(2) The bond shall:

(A) Be in the form prescribed by rule of the board; and

(B) Accrue to the state for the benefit of a claimant against the registrant to secure the faithful performance of the registrant's obligations under this subchapter.

(3) The aggregate liability of the surety shall not exceed the principal sum of the bond.

(4) A party having a claim against the registrant may bring suit directly on the surety bond, or the board may bring suit on behalf of the party having a claim against the registrant.

(5) Consumer claims are given priority in recovering from the bond.

(6) A deposit of cash or security may be accepted in lieu of the surety bond.

(7) A claim reducing the face amount of the bond shall be annually restored upon renewal of the registrant's registration.

(c)(1) Registrations issued under this subchapter shall be renewed annually beginning twelve (12) months from the date of issuance.

(2)(A) Failure to timely renew a registration shall result in a loss of authority to operate under this subchapter.

(B) A request to reinstate a certificate of registration shall be accompanied by payment of a penalty of fifty dollars (\$50.00) for each month of delinquency.

History. Acts 2009, No. 628, § 1.

17-14-407. Registrant responsibilities and duties.

(a) A registrant that is an organization shall:

(1) Maintain a registered agent for service of process under the Model Registered Agents Act, § 4-20-101 et seq.; and

(2) Provide to the Arkansas Appraiser Licensing and Certification Board the information required by § 4-20-105(a) concerning the orga-

nization's agent for service of process and within five (5) business days any changes to the information.

(b)(1) A registrant shall maintain or cause to be maintained complete records of requests for appraisal services referred to an appraiser licensed or certified by the board, including without limitation records pertaining to the acceptance of fees from borrowers or clients and payments to appraisers.

(2) The board may inspect the records without prior notice periodically or if the board determines that the records are pertinent to an investigation of a complaint against a registrant.

(c)(1) A registrant shall designate a controlling person or managing principal responsible for ensuring compliance with this subchapter.

(2) The registrant shall file a form with the board certifying:

(A) The identity of the controlling person or the managing principal; and

(B) The individual's acceptance of the responsibilities of a controlling person or a managing principal.

(3) The registrant shall notify the board within thirty (30) days of a change in its controlling person or managing principal.

(4) An individual registrant who operates as a sole proprietorship is considered the managing principal under this subchapter.

(d)(1) A registrant shall make and keep the accounts, correspondence, memoranda, papers, books, and other records in accordance with rules promulgated by the board.

(2) All records shall be retained for five (5) years unless the board by rule prescribes a different retention period for particular types of records.

(e) If the information contained in a document filed with the board is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file an amendment correcting the information contained in the document.

(f) The registrant shall disclose to its client the actual fees paid to an appraiser for appraisal services separately from any other fees or charges for appraisal management services.

History. Acts 2009, No. 628, § 1.

17-14-408. Prohibited activities.

(a) An employee, director, officer, or agent of an appraisal management company or any other third party acting as a joint venture partner with or independent contractor for an appraisal management company shall not improperly influence or attempt to improperly influence the development, reporting, result, or review of a real estate appraisal, including without limitation through the use of intimidation, coercion, extortion, bribery, blackmail, threat of nonpayment or withholding payment for appraisal services, or threat of exclusion from future appraisal work.

(b) The registrant shall not:

(1) Require an appraiser to collect the appraisal fee from a borrower, homeowner, or other third party;

(2) Hire, employ, or in any way contract with or pay a real estate broker to perform a broker's price opinion or comparative market analysis unless the broker's price opinion or comparative market analysis will be performed only for listing or selling property that the registrant owns;

(3) Require an appraiser to provide the registrant with the appraiser's digital signature or seal;

(4) Alter, amend, or change an appraisal report submitted by a licensed or certified appraiser including without limitation by:

(A) Removing the appraiser's signature or seal; or

(B) Adding or removing information to or from the appraisal report;

(5)(A) Allow the removal of an independent appraiser from an appraiser panel without prior written notice to the appraiser.

(B) Written notice shall include written evidence of:

(i) The appraiser's illegal conduct;

(ii) A violation of the minimum reporting standards under § 17-14-202(b) or other applicable statutes or rules;

(iii) Substandard performance; or

(iv) Otherwise improper or unprofessional behavior;

(6) Enter into contracts or agreements with an independent appraiser for the performance of appraisal services unless the independent appraiser is licensed or certified in good standing with the Arkansas Appraiser Licensing and Certification Board;

(7) Request that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report or provide estimated values or comparable sales at any time before the appraiser completes an appraisal report;

(8)(A) Except as provided in subdivision (b)(8)(B) of this section, provide to an appraiser an anticipated, estimated, encouraged, or desired value for a property or a proposed or target amount to be loaned to the borrower.

(B) A copy of the sales contract for purchase transactions may be provided; or

(9) Commit an act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality.

(c) Subsection (a) of this section does not prohibit an appraisal management company from requesting that an independent appraiser:

(1) Provide additional information about the basis for a valuation;

(2) Correct objective factual errors in an appraisal report; or

(3) Provide further detail, substantiation, or explanation for the appraiser's value conclusion.

17-14-409. Registry of applicants and roster.

(a)(1) The Executive Director of the Arkansas Appraiser Licensing and Certification Board shall keep a register of all applicants for registration.

(2) The register shall indicate:

- (A) The date of application;
- (B) The applicant's name;
- (C) The applicant's business address; and
- (D) Whether the registration was granted or denied.

(3) The register shall be prima facie evidence of all matters contained in the register.

(b)(1) The executive director shall keep a current roster showing the names and addresses of all appraisal management companies registered with the board.

(2) The roster shall be kept on file in the office of the board and shall be open for public inspection.

History. Acts 2009, No. 628, § 1.

17-14-410. Disciplinary authority, enforcement, and hearings.

(a) The Arkansas Appraiser Licensing and Certification Board may deny, suspend, revoke, or refuse to issue or renew the registration of an appraisal management company under this subchapter or may restrict or limit the activities of an appraisal management company or a person who owns an interest in or participates in the business of an appraisal management company if the board finds that any of the following circumstances apply to the applicant, a registrant, or a partner, member, manager, officer, director, managing principal, controlling person, or a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the applicant or registrant:

(1) The person's application for registration when filed or after filing contained a statement that in light of the circumstances under which it was made is false or misleading with respect to a material fact;

(2) The person has violated or failed to comply with this subchapter;

(3) The person has pleaded guilty or nolo contendere to or been found guilty of:

(A) A felony; or

(B) Within the past ten (10) years:

(i) A misdemeanor involving mortgage lending or real estate appraising; or

(ii) An offense involving breach of trust, moral turpitude, or fraudulent or dishonest dealing;

(4) The person is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving appraisal management services or operating an appraisal management company;

(5) The person is the subject of an order of the board or any other state appraisal management company regulatory agency denying, suspending, or revoking the person's privilege to operate as an appraisal management company;

(6) The person acted as an appraisal management company while not properly licensed by the board; or

(7) The person failed to pay the proper filing or renewal fee under this subchapter.

(b) Upon its own motion or the written complaint of a person and after notice and hearing as prescribed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the board may:

(1) Suspend or revoke the registration of a registrant;

(2) Impose a fine not to exceed one thousand dollars (\$1,000) per violation; or

(3) Take other appropriate disciplinary actions as established by rule of the board.

(c)(1) Before imposing a penalty on a registrant, the board shall:

(A) Notify the registrant in writing of any charges made at least twenty (20) days before the date set for the hearing; and

(B) Afford the registrant an opportunity to be heard in person or by counsel.

(2) The board may make findings of fact and shall deliver or mail the findings to the registrant charged with an offense under this subchapter.

History. Acts 2009, No. 628, § 1.

17-14-411. Injunctive relief — Criminal penalty.

(a) The Arkansas Appraiser Licensing and Certification Board may appear in its own name in a circuit court of competent jurisdiction to obtain injunctive relief to prevent a person from violating this subchapter.

(b) The circuit court may grant a temporary or permanent injunction regardless of whether:

(1) Criminal prosecution has been or may be instituted as a result of the violation of this subchapter; or

(2) The person is the holder of a registration issued by the board.

(c) A violation of this subchapter is a Class D felony.

History. Acts 2009, No. 628, § 1.

17-14-412. Applicability.

This subchapter does not apply to:

(1) An agency of the federal, state, county, or municipal government;

(2) A person authorized to engage in business as a bank, farm credit system, savings institution, or credit union under the laws of the United States, the State of Arkansas, or any other state;

(3) A licensed real estate broker or licensed real estate agent performing activities regulated by the Arkansas Real Estate Commission unless the licensed real estate broker or licensed real estate agent receives compensation or other pecuniary gain in connection with the referral, placement, or execution of a request for appraisal services; or

(4) An officer or employee of a government agency, person, licensed real estate broker, or licensed real estate agent described in this section when acting within the scope of employment of the officer or employee.

History. Acts 2009, No. 628, § 1.

CHAPTER 15

ARCHITECTS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS STATE BOARD OF ARCHITECTS.
3. REGISTRATION AND LICENSING.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-14-101 et seq.

RESEARCH REFERENCES

ALR. Grant or denial of license to practice architecture. 2 A.L.R.4th 1103.

Necessity of expert testimony to show malpractice of architect. 3 A.L.R.4th 1023.

Architect's services as within mechanics' lien statute. 31 A.L.R.5th 664.

Am. Jur. 5 Am. Jur. 2d, Architects, §§ 1-6, 19, 20.

Ark. L. Rev. Some Legal and Other Problems of Professional Corporations in Arkansas, 24 Ark. L. Rev. 292.

C.J.S. 6 C.J.S., Architects, § 7 et seq.

CASE NOTES

ANALYSIS

Injunctive Relief.

Scope of Review.

Injunctive Relief.

Since this chapter provides adequate relief for the practice of architecture without a license, injunctive relief was not allowable in addition to the penalties specifically provided where there were no allegations of any equitable grounds for injunctive relief. *Arkansas State Bd. of Architects v. Clark*, 226 Ark. 548, 291 S.W.2d 262 (1956).

Scope of Review.

Where no constitutional question was raised in a suit to enjoin corporation from practice of architecture, the Supreme Court would not consider the wisdom of the enactment of this chapter but would only measure the facts of the case by the yardstick of the statutory language. *Arkansas State Bd. of Architects v. Bank Bldg. & Equip. Corp.*, 225 Ark. 889, 286 S.W.2d 323 (1956).

Cited: *Arkansas State Bd. of Architects v. Larsen*, 226 Ark. 536, 291 S.W.2d 269 (1956).

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-15-101. Title.
- 17-15-102. Definitions.
- 17-15-103. Penalties.

SECTION.

- 17-15-104. Enforcement.
- 17-15-105. Injunctions.

Cross References. Exemptions from contractors' license provision, § 17-25-102.

Landscape Architectural Title Act, § 17-36-101 et seq.

License requirements to accompany invitation to bid, § 17-25-313.

Preambles. Acts 1941, No. 270 contained a preamble which read: "Whereas, in order to safeguard life, health, and property, it is important that the practice of architecture in this state should be regulated;

"Now, therefore...."

Effective Dates. Acts 1941, No. 270, § 16: approved Mar. 26, 1941. Emergency clause provided: "That inasmuch as designs for the construction of public and private works within the State of Arkansas are in progress, and that the design of all such public and private works, within the specific regulation of this act, ought to be regulated in order to safeguard life, health, and property and to promote the general welfare, an emergency is hereby declared to exist and this act shall take effect immediately upon its passage."

17-15-101. Title.

This chapter may be known and cited as the "Arkansas Architectural Act".

History. Acts 1941, No. 270, § 15; A.S.A. 1947, § 71-313.

17-15-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Architect" means a person who is technically and legally qualified to practice architecture;

(2) "Direct supervision" means that degree of supervision by a person overseeing the work of another whereby the supervisor has both control over and detailed professional knowledge of the work prepared under his or her supervision;

(3)(A) "Good moral character" means character that will enable a person to discharge the fiduciary duties of an architect to his or her client and to the public for the protection of health, safety, and welfare.

(B) Evidence of inability to discharge such duties includes the commission of an offense justifying discipline under § 17-15-308;

(4)(A)(i) "Practice of architecture" means the provision of, or offering to provide, services in connection with the design and construction, enlargement, or alteration of a building or group of buildings, and the

space within and surrounding such buildings, which is designed for human occupancy or habitation.

(ii) The services include:

(a) Planning;

(b) Providing preliminary studies, designs, drawings, specifications, and other technical submissions; and

(c) Administration of construction contracts.

(B) The “practice of architecture” does not include the practice of engineering as defined in the Arkansas Engineering Act, § 17-30-101 et seq., or the practice of contracting as defined in the Contractors Licensing Law, § 17-25-101 et seq., but a registered architect may perform such engineering work as is incidental to the practice of architecture, and an engineer may practice such architectural work as is incidental to the practice of engineering.

(C) The provisions of this chapter affirm the legal authority of an engineer licensed under the Arkansas Engineering Act, § 17-30-101 et seq., to provide consultation, investigation, evaluation, planning, and design of buildings intended for the accommodation of equipment, vehicles, goods, or processes or other utilitarian function, with human occupancy including office space as required for the support of these functions, provided the engineer is practicing within his or her area of competency as defined in the Arkansas Engineering Act, § 17-30-101 et seq.;

(5) “Registered architect” means an architect holding a current registration in the State of Arkansas;

(6) “Registration” means the certificate of registration issued by the Arkansas State Board of Architects, Landscape Architects, and Interior Designers; and

(7) “Technical submissions” means drawings, specifications, studies, and other technical reports prepared in the course of practicing architecture.

History. Acts 1941, No. 270, §§ 1, 14; A.S.A. 1947, §§ 71-301, 71-312; Acts 1993, No. 578, § 1; 1995, No. 860, § 1; 2009, No. 1367, § 4.

Amendments. The 2009 amendment deleted former (2) and redesignated the

remaining subsections accordingly; re-wrote (4) substituted “Arkansas State Board of Architects, Landscape Architects, and Interior Designers” for “examining body” in (6); and made minor stylistic changes.

CASE NOTES

ANALYSIS

Constitutionality.
“Architect.”

Constitutionality.

Section 17-30-104, along with § 17-30-

101 and this section, are not void for vagueness as a person of ordinary intelligence could glean that architects plan and design buildings primarily intended for people to live and work in, and engineers plan and design buildings primarily intended for accommodation of equipment,

vehicles, goods, and/or processes. *Holloway v. Ark. State Bd. of Architects*, 352 Ark. 427, 101 S.W.3d 805 (2003).

“Architect.”

An architect is one whose occupation it is to form and devise plans and designs and draw up specifications for buildings or

structures and to superintend their construction. *Arkansas State Bd. of Architects v. Bank Bldg. & Equip. Corp.*, 225 Ark. 889, 286 S.W.2d 323 (1956).

Cited: *Holloway v. State Bd. of Architects*, 79 Ark. App. 200, 86 S.W.3d 391 (2002).

17-15-103. Penalties.

A person shall be guilty of a Class B misdemeanor each day of the unlawful practice to constitute a distinct and separate offense if that person:

(1) Practices or offers to practice the profession of architecture in this state without being registered or exempted therefrom in accordance with the provisions of this chapter;

(2) Gives any false or forged evidence of any kind to the Arkansas State Board of Architects, Landscape Architects, and Interior Designers or to any member thereof for the purpose of obtaining a certificate of registration;

(3) Falsely impersonates any other registrant of like or different name;

(4) Attempts to use an expired or revoked certificate of registration; or

(5) Violates, or aids or abets any violation of, any of the provisions of this chapter.

History. Acts 1941, No. 270, § 7; A.S.A. 1947, § 71-308; Acts 2005, No. 1994, § 237.

Amendments. The 2005 amendment inserted “Class B” and deleted “and shall upon conviction be sentenced to pay a fine

of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) or suffer imprisonment for a period not exceeding three (3) months, or be both so fined and imprisoned” following “misdemeanor.”

CASE NOTES

Practice Without License.

Where an unlicensed person performed architectural services, he could not recover under a contract therefor since this

section prohibits and makes illegal such activity by one not properly licensed. *Sarkco, Inc. v. Edwards*, 252 Ark. 1082, 482 S.W.2d 623 (1972).

17-15-104. Enforcement.

(a) It shall be the duty of all duly constituted officers of the law in this state, and of all political subdivisions, to enforce the provisions of this chapter and to prosecute any persons violating its provisions.

(b) The Attorney General or his or her assistants shall act as legal advisors to the Arkansas State Board of Architects, Landscape Architects, and Interior Designers and shall render any legal assistance that may be necessary in carrying out the provisions of this chapter. The board, in its discretion, may employ other legal assistance that it may require.

History. Acts 1941, No. 270, § 11; A.S.A. 1947, § 71-311; Acts 2009, No. 1367, § 5.

Amendments. The 2009 amendment,

in (b), inserted “Landscape Architects, and Interior Designers” in the first sentence; and substituted “board” for “examining body” in the last sentence.

17-15-105. Injunctions.

(a) The violation of any provision of this chapter, and the construction of any structure in violation of its provisions, or any of them, is declared to constitute a nuisance and a threat to the public health and welfare and may be enjoined by the Arkansas State Board of Architects, Landscape Architects, and Interior Designers in the circuit courts of this state, even though the violation may be punishable by fine, the intention of this section being to provide a speedy means of protecting the public.

(b) The board shall not be required to execute or give a bond for cost, indemnity, or stay, as a condition to the issuance of a restraining order or injunction, either temporary or permanent, in any court of this state.

History. Acts 1959, No. 157, § 3; A.S.A. 1947, § 71-314; Acts 2009, No. 1367, § 6.

Amendments. The 2009 amendment substituted “board” for “examining body” in (b).

Cross References. Jurisdiction of circuit courts, Ark. Const. Amend. 80, §§ 6, 19.

SUBCHAPTER 2 — ARKANSAS STATE BOARD OF ARCHITECTS

SECTION.

17-15-201. Members.

17-15-202. Organization and proceedings.

SECTION.

17-15-203. Duties and powers.

17-15-204. Records and reports.

17-15-205. Continuing education.

A.C.R.C. Notes. Acts 2009, No. 1367, § 1, provided: “Renaming the Arkansas State Board of Architects.

“(a) The Arkansas State Board of Architects is renamed the Arkansas State Board of Architects, Landscape Architects, and Interior Designers.

“(b) The Arkansas Code Revision Commission shall replace all references to the ‘Arkansas State Board of Architects’ in the Arkansas Code with ‘Arkansas State Board of Architects, Landscape Architects, and Interior Designers.’”

Acts 2009, No. 1367, § 2, provided: “(a) The State Board of Registered Interior Designers, established by § 17-35-201 et seq., is abolished, and its powers and duties are transferred to the Arkansas State Board of Architects, Landscape Architects, and Interior Designers by a type 3 transfer under § 25-2-106.

“(b) For purposes of this act, the Arkansas State Board of Architects, Landscape Architects, and Interior Designers shall be considered a principal department established by Acts 1971, No. 38.”

Acts 2009, No. 1367, § 3, provided: “(a) The Arkansas State Board of Landscape Architects, established by § 17-36-201 et seq., is abolished, and its powers and duties are transferred to the Arkansas State Board of Architects, Landscape Architects, and Interior Designers by a type 3 transfer under § 25-2-106.

“(b) For purposes of this act, the Arkansas State Board of Architects, Landscape Architects, and Interior Designers shall be considered a principal department established by Acts 1971, No. 38.”

Cross References. Liability of committee members of professional societies, § 17-1-102.

Preambles. Acts 1941, No. 270 contained a preamble which read: "Whereas, in order to safeguard life, health, and property, it is important that the practice of architecture in this state should be regulated;

"Now, therefore...."

Effective Dates. Acts 1941, No. 270, § 16: approved Mar. 26, 1941. Emergency clause provided: "That inasmuch as designs for the construction of public and private works within the State of Arkansas are in progress, and that the design of all such public and private works, within the specific regulation of this act, ought to be regulated in order to safeguard life, health, and property and to promote the general welfare, an emergency is hereby declared to exist and this act shall take effect immediately upon its passage."

Acts 1969, No. 334, § 2: Mar. 27, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law regarding the compensation of the assistant secretary of the Arkansas State Board of Architects is grossly inadequate and that the proper functioning of the Arkansas State Board of Architects depends upon the immediate fair and just compensation of the assistant secretary. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1981, No. 717, § 3: Mar. 25, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that regulatory boards and commissions covered by Acts 1977, No. 113 exist for the singular purpose of protecting the public health and welfare; that it is necessary and proper that the public be represented on such boards and commissions; that the operations of such boards and commissions have a profound effect on the daily lives of all Arkansans; and that the public's voice should not be muted on any question coming before such public bodies. Therefore, an emergency is

hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 131, § 6 and No. 135, § 6: Feb. 10, 1983. Emergency clauses provided: "It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as to questions coming before such bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-15-201. Members.

(a)(1) The Arkansas State Board of Architects, Landscape Architects, and Interior Designers shall consist of nine (9) members, appointed by the Governor and confirmed by the Senate for terms of five (5) years, or until their successors are duly appointed and qualified.

(2) At least thirty (30) days prior to the expiration of the term of appointment of any board member, other than those of the members appointed from the general public, professional societies and associations representing the three (3) design professions may submit to the Governor the names of three (3) persons of recognized ability who have the qualifications prescribed for board members for appointment from that profession for consideration.

(b)(1) Each member of the board shall be a citizen of the United States and a resident of this state.

(2) Five (5) members shall be architects of recognized standing who have been engaged in the independent practice of architecture for at least ten (10) years before appointment.

(3)(A) Two (2) members shall not be actively engaged in or retired from the profession of architecture, interior design, or landscape architecture.

(B) The two (2) members shall represent consumers, and both shall be appointed from the state at large subject to confirmation by the Senate.

(C) The two (2) positions may not be held by the same person. Both shall be full voting members but shall not participate in the grading of examinations.

(4) One (1) member shall be a landscape architect licensed by the board under § 17-36-301 et seq.

(5) One (1) member shall be a registered interior designer registered by the board under § 17-35-301 et seq.

(c) Each member of the board shall receive a certificate of his or her appointment from the Governor and before beginning his or her term of office shall file with the Secretary of State his or her written oath for the faithful discharge of his or her duties.

(d)(1) By due process of law, the Governor may remove any member of the board for misconduct, incompetency, neglect of duty, or for any malfeasance in office.

(2) Vacancies in the membership of the board shall be filled for the unexpired term by appointment by the Governor as provided for in subsection (b) of this section.

(3) If the Governor does not name a successor for an unexpired term or fill a vacancy within three (3) months after the term of a member has expired or a vacancy occurred, then the remaining members of the board shall be empowered to, and may, fill the vacancy by electing a member having the qualifications required by subsection (b) of this section to serve out the vacant term.

(e) Each member of the board may receive expense reimbursement under § 25-16-901 et seq.

History. Acts 1941, No. 270, § 3; 1957, No. 219, § 1; 1959, No. 157, § 2; 1977, No. 113, §§ 1-3; 1981, No. 717, § 2; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-617 — 6-619, 6-623 — 6-626, 71-303; Acts 1997, No. 250, § 124; 1999, No. 1338, § 1; 2009, No. 1367, § 7.

Publisher's Notes. The terms of the members of the Arkansas State Board of Architects, other than the representatives of consumers and the elderly, are ar-

ranged so that one term expires every year.

Acts 1981, No. 717, § 1, provided that the purpose of the act was to provide consumer representatives on state boards and commissions affected by Acts 1977, No. 113 full voting authority as board members.

Amendments. The 2009 amendment rewrote the section.

17-15-202. Organization and proceedings.

(a) The Arkansas State Board of Architects, Landscape Architects, and Interior Designers shall hold at least two (2) meetings each year for the purpose of examining the candidates for registration and license. Special meetings shall be held at such times as the regularly adopted rules of the board provide.

(b) Five (5) members of the board shall constitute a quorum, but no action may be taken without at least three (3) votes in accord.

(c) The board shall adopt and have an official seal.

(d)(1) The board shall annually elect a president, a secretary, and a treasurer.

(2) The offices of secretary and treasurer may be held by the same person, and there may be included in the election, if deemed advisable by the board, a vice president.

(e) All expenses incurred by the board for the administration of this chapter, § 17-35-101 et seq., and § 17-36-101 et seq. are to be defrayed by revenues provided for in this chapter, § 17-35-101 et seq., and § 17-36-101 et seq.

History. Acts 1941, No. 270, § 3; 1957, No. 219, § 1; 1969, No. 334, § 1; A.S.A. 1947, § 71-303; Acts 2009, No. 1367, § 7.

Amendments. The 2009 amendment rewrote the section.

17-15-203. Duties and powers.

(a)(1) The Arkansas State Board of Architects, Landscape Architects, and Interior Designers shall make such rules as may be desirable or necessary for the performance of its duties and for carrying out the purposes of this chapter, § 17-35-101 et seq., and § 17-36-101 et seq.

(2) The board may bring suit in its proper name to enforce, or restrain the violation of, any provision of this chapter, § 17-35-101 et seq., and § 17-36-101 et seq.

(b)(1) In carrying into effect the provisions of this chapter, § 17-35-101 et seq., and § 17-36-101 et seq., the board, under the hand of its president and the seal of the board, may:

(A) Subpoena witnesses and compel their attendance; and

(B) Require the production of books, papers, documents, etc., in a case involving revocation of registration.

(2) The president or the secretary may administer oaths or affirmations to witnesses appearing before the board.

(3)(A) If a person refuses to obey a subpoena issued by the board or refuses to testify or produce books, papers, or other documents, the board may present its petition to a court of record, setting forth the facts.

(B) The court shall, in a proper case, issue its subpoena to the person requiring his or her attendance before the court to testify or produce the books, papers, and documents as may be deemed necessary and pertinent.

(C) A person failing or refusing to obey the subpoena or order of the court may be proceeded against in the same manner as for refusal to obey any other subpoena.

(c) The board or a committee thereof is entitled to the services of the Attorney General and the services of the prosecuting attorneys for the county and district in which enforcement is required. The board may employ legal advice necessary for the proper conduct of its affairs.

(d)(1) Once a complaint has been received in the office of the board, the board shall send notice in accordance with § 25-15-208(a)(2) to the person or entity allegedly committing the violation informing the person or entity that if the person or entity fails to respond to the notice, the board will hold a hearing on the alleged violation. The board shall take appropriate action upon receiving the reply.

(2)(A)(i) After providing notice and a hearing, the board may levy civil penalties, in an amount not to exceed five thousand dollars (\$5,000) for each violation, against those individuals or entities found to be in violation of this chapter, § 17-35-101 et seq., § 17-36-101 et seq., or rules promulgated thereunder.

(ii) All revenue received under this section shall be deposited into one (1) or more financial institutions in the state and shall be used for the purposes of defraying the expenses of the board as required for carrying out the provisions of this chapter, § 17-35-101 et seq., and § 17-36-101 et seq.

(iii) These penalties shall be in addition to other penalties that may be imposed by the board under this chapter, § 17-35-101 et seq., or § 17-36-101 et seq.

(iv) Unless the penalty assessed under this section is paid within fifteen (15) days following the date for an appeal from the order, the board shall have the power to file suit in the Pulaski County Circuit Court to obtain a judgment for the amount of penalty not paid.

(B) All actions taken by the board shall comply with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1941, No. 270, § 3; 1957, No. 219, § 1; 1959, No. 157, § 2; 1969, No. 334, § 1; A.S.A. 1947, § 71-303; Acts 1993, No. 578, § 2; 1999, No. 1338, § 2; 2009, No. 1367, § 7.

Amendments. The 2009 amendment rewrote the section.

CASE NOTES

Civil Penalty.

Penalty imposed by the Arkansas Board of Architecture against an engineer who the board determined was practicing unlicensed architecture was not arbitrary, capricious, and an abuse of discretion; the findings of the board and the imposition of the penalty were supported by substantial evidence. *Holloway v. Ark. State Bd. of Architects*, 352 Ark. 427, 101 S.W.3d 805 (2003).

Because § 17-30-104 allowed a licensed engineer to provide planning and design services for buildings intended for the accommodation of, among other things,

equipment and human occupancy, the mere fact that an engineer engaged in the planning and design of a building was not enough to prove that the engineer engaged in unauthorized practice of architecture; therefore, a civil penalty imposed against the engineer under subdivision (d)(2)(A)(i) of this section was vacated and the matter was remanded to the Arkansas State Board of Architects for further fact-finding. *Holloway v. State Bd. of Architects*, 79 Ark. App. 200, 86 S.W.3d 391 (2002), *aff'd in part, reversed in part*, *Holloway v. Ark. State Bd. of Architects*, 352 Ark. 427, 101 S.W.3d 805 (2003).

17-15-204. Records and reports.

(a) The Arkansas State Board of Architects, Landscape Architects, and Interior Designers shall keep a record of its proceedings and a register of all applications for registration that shall show:

- (1) Name, age, and residence of the applicant;
- (2) Date of application;
- (3) Educational and other qualifications;
- (4) Whether or not an examination was required;
- (5) Whether the applicant was rejected;
- (6) Whether a certificate of registration was granted;
- (7) Date of the action of the board; and
- (8) Any other information as may be deemed necessary by the board.

(b) A roster showing the names, addresses, and places of business of all registered architects, registered landscape architects, and registered interior designers shall be prepared by the secretary of the board at least once each year.

History. Acts 1941, No. 270, § 3; A.S.A. 1947, § 71-303; Acts 2009, No. 1367, § 7.

Amendments. The 2009 amendment rewrote the section.

17-15-205. Continuing education.

(a) The Arkansas State Board of Architects, Landscape Architects, and Interior Designers may adopt regulations setting minimum standards of continuing education to ensure that all registered architects, registered landscape architects, and registered interior designers remain informed of those technical and professional subjects that the board deems appropriate.

(b) The board may by rules describe the methods by which such standards may be satisfied, and may provide that failure to satisfy the minimum standards shall be grounds for nonrenewal of the certificate of registration.

History. Acts 1995, No. 784, § 1; 2009, No. 1367, § 7.

Amendments. The 2009 amendment rewrote the section.

SUBCHAPTER 3 — REGISTRATION AND LICENSING

SECTION.

- 17-15-301. License required.
- 17-15-302. Exemptions.
- 17-15-303. Partnerships and corporations.
- 17-15-304. Examinations.
- 17-15-305. Certification generally.
- 17-15-306. [Repealed.]
- 17-15-307. Official seal.

SECTION.

- 17-15-308. Grounds for revocation.
- 17-15-309. Revocation proceedings.
- 17-15-310. Reissuance of certificate of registration.
- 17-15-311. Fees.
- 17-15-312. Practice by architect not registered in Arkansas.

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Preambles. Acts 1941, No. 270 contained a preamble which read: "Whereas, in order to safeguard life, health, and property, it is important that the practice of architecture in this state should be regulated;

"Now, therefore...."

Effective Dates. Acts 1941, No. 270, § 16: approved Mar. 26, 1941. Emergency clause provided: "That inasmuch as designs for the construction of public and private works within the State of Arkansas are in progress, and that the design of all such public and private works, within the specific regulation of this act, ought to be regulated in order to safeguard life, health, and property and to promote the general welfare, an emergency is hereby declared to exist and this act shall take effect immediately upon its passage."

Acts 1975 (1st Extended Sess., 1976), No. 1204, § 3: Feb. 11, 1976. Emergency clause provided: "It is hereby found and determined by the General Assembly that construction costs in this state have increased significantly in recent years, that the existing statutes specify the circumstances under which architects must be employed to design such buildings, that the dollar amounts specified in such statutes have not been increased adequately to compensate for the significant increase in building construction costs in this state, and that the immediate passage of this act is necessary to correct such situation, thereby removing an inequity that is working an undue hardship on the build-

ing industry in the state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 18, § 3: Feb. 3, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that construction costs in this state have increased significantly in recent years; that the existing statutes specify the circumstances under which architects must be employed to design buildings; that the dollar amounts specified in such statutes have not been increased adequately to compensate for the significant increase in building construction costs in this state; and that the immediate passage of this act is necessary to correct such situation, thereby removing an inequity that is working an undue hardship on the building industry in this state. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 646, § 5: Mar. 23, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present architectural licensing law does not allow an architectural/engineering firm to engage in the practice of architecture in this state; that in certain instances such practice is beneficial; and that this act is immediately necessary to prescribe procedures for allowing the same. Therefore, an emergency

is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 1002, § 3: Apr. 14, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1204 of the Ex-

tended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Ark. L. Rev. Case Notes — Equity — Injunctions — Unlicensed Practice of a Profession, 11 Ark. L. Rev. 177.

17-15-301. License required.

In order to safeguard life, health, and property, no person shall practice architecture in this state, or engage in preparing plans, specifications, or preliminary data for the erection or alteration of any building located within the boundaries of this state, or use the title "architect", or display or use any title, sign, card, advertisement, or other device to indicate that the person practices or offers to practice architecture, or is an architect, unless the person shall have secured from the Arkansas State Board of Architects, Landscape Architects, and Interior Designers a certificate of registration and license in the manner hereinafter provided and shall thereafter comply with the provisions of this chapter governing the registration and licensing of architects.

History. Acts 1941, No. 270, § 2; A.S.A. 1947, § 71-302.

CASE NOTES

ANALYSIS

Corporations.
Practicing Architecture Without License.

Corporations.

Building corporation could not be authorized to practice architecture in Arkansas where the name of architect licensed to practice in Arkansas did not appear in the name of the corporation and where the architect was not in fact a principal but an employee. *Arkansas State Bd. of Architects v. Bank Bldg. & Equip. Corp.*, 225 Ark. 889, 286 S.W.2d 323 (1956).

Building corporation, by furnishing the services of architects to its customers, was engaging in the practice of architecture. *Arkansas State Bd. of Architects v. Bank Bldg. & Equip. Corp.*, 225 Ark. 889, 286 S.W.2d 323 (1956).

Practicing Architecture Without License.

A civil engineer was properly found to have practiced architecture without a license where he offered to provide architectural/engineering design services for a courthouse, he attended a quorum court meeting to make a presentation for archi-

tectural design work, and prepared a color rendering of the proposed courthouse project. Although the engineer asserted that he never intended to do the architectural work himself and intended that it be done by a licensed architect, he had no firm agreement with a licensed architect at the time he offered to provide architectural/engineering design services. *Arkansas State Bd. of Architects v. Hawkins*, 69 Ark. App. 250, 12 S.W.3d 253 (2000).

The mere fact that an engineer engaged

in the planning and design of a building was not enough to prove that the engineer engaged in unauthorized practice of architecture. *Holloway v. State Bd. of Architects*, 79 Ark. App. 200, 86 S.W.3d 391 (2002), *aff'd in part, reversed in part*, *Holloway v. Ark. State Bd. of Architects*, 352 Ark. 427, 101 S.W.3d 805 (2003).

Cited: *Holloway v. Ark. State Bd. of Architects*, 352 Ark. 427, 101 S.W.3d 805 (2003).

17-15-302. Exemptions.

(a) The following shall be exempt from the provisions of this chapter:

(1) Professional engineers duly licensed or registered, but only insofar as concerns work incidental to engineering practice, provided such persons do not use the designation "architect" or any term derived therefrom;

(2) Employees of those lawfully practicing architecture who are acting under the instruction, control, or supervision of their employer;

(3) Officers and employees of the government of the United States while engaged within this state in the practice of architecture for the government;

(4) Residents of this state who do not use the title "architect" or any term derived therefrom who act as designers for:

(A) Buildings that are to be constructed for personal use, such as residences, if the buildings are not intended or adaptable for public employment, assembly, or any other use under which they will be open to the public;

(B) Single family detached, duplex, triplex, and quadruplex dwellings; or

(C) Buildings whose total cumulative and fair market value to complete, not including site, does not exceed one hundred thousand dollars (\$100,000); and

(5) Owners and employees of planing mills, woodworking establishments, sash and door manufacturers, and jobbers in the designing, planning, detailing, and preparation of data on millwork, woodwork, and cabinetwork, provided they do not use the designation "architect" or any term derived therefrom.

(b)(1) The terms of this chapter shall not apply to:

(A) Any public school district exempted from the provisions of this chapter; or

(B) Every public school district embracing a city with a population in excess of thirty thousand (30,000) which maintains a full-time superintendent of buildings with engineering and architectural experience.

(2) This exception shall only apply:

(A) If the total cumulative and fair market value to complete the repair and maintenance of buildings already constructed and alter-

ations thereof does not exceed the sum of one hundred thousand dollars (\$100,000); and

(B) If the total cumulative and fair market value to complete the new structures will not exceed the sum of one hundred thousand dollars (\$100,000).

(c) The provisions of this chapter shall not apply to any public school district, place of assembly, daycare, church, or building not more than one (1) story high where:

(1) The total cumulative and fair market value to complete the building, alteration, or structure does not exceed the sum of one hundred thousand dollars (\$100,000); and

(2) The plans are approved by the State Fire Marshal.

History. Acts 1941, No. 270, § 2; 1959, No. 157, § 1; 1971, No. 582, § 1; 1973, No. 417, § 1; 1975 (Extended Sess., 1976), No. 1204, § 1; 1981, No. 18, § 1; A.S.A. 1947, § 71-302; reen. Acts 1987, No. 1002, § 1; 1995, No. 860, § 2; 1995, No. 1108, §§ 1, 2; 1999, No. 1338, § 3.

A.C.R.C. Notes. Part of this section was reenacted by Acts 1987, No. 1002,

§ 1. Acts 1987, No. 834, provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any other 1987 legislation and that such other legislation would be controlling in the event of conflict.

Publisher's Notes. Acts 1995, No. 860 became law without the Governor's signature.

CASE NOTES

Constitutionality.

Section 17-30-104, along with §§ 17-30-101 and 17-15-102, are not void for vagueness as a person of ordinary intelligence could glean that architects plan and design buildings primarily intended for people to live and work in, and engineers plan and design buildings primarily in-

tended for accommodation of equipment, vehicles, goods, and/or processes. *Holloway v. Ark. State Bd. of Architects*, 352 Ark. 427, 101 S.W.3d 805 (2003).

Cited: *Holloway v. State Bd. of Architects*, 79 Ark. App. 200, 86 S.W.3d 391 (2002).

17-15-303. Partnerships and corporations.

(a) A partnership or a corporation may be admitted to practice architecture in this state if:

(1) Two-thirds ($\frac{2}{3}$) of the partners, if a partnership, or two-thirds ($\frac{2}{3}$) of the directors, if a corporation, are registered under the laws of any state to practice architecture or engineering; and

(2) The person having the practice of architecture in his or her charge is himself or herself a partner, if a partnership, or a director, if a corporation, and registered to practice architecture in this state.

(b) The Arkansas State Board of Architects, Landscape Architects, and Interior Designers is authorized to require by regulation any partnership or corporation practicing architecture in this state to file information concerning its officers, directors, beneficial owners, and other aspects of its business organization upon such forms as the board prescribes.

History. Acts 1941, No. 270, § 2; 1959, No. 157, § 1; 1971, No. 582, § 1; 1981, No. 646, §§ 1, 2; A.S.A. 1947, § 71-302.

Publisher's Notes. Acts 1981, No. 646, § 3, provided that the amendment made

to this section by that act should control over any other act regulating the registration, licensure, or incorporation of partnerships and corporations practicing architecture.

17-15-304. Examinations.

(a) To be registered and licensed, an applicant must pass an examination for licensure.

(b)(1) To be qualified for admission to an examination to practice architecture in the State of Arkansas, an applicant must be at least twenty-one (21) years of age and of good moral character.

(2) In addition, the applicant shall have all the qualifications required for admission to either the written examination or the senior examination of the National Council of Architectural Registration Boards.

(c) The Arkansas State Board of Architects, Landscape Architects, and Interior Designers is empowered to make all necessary rules and regulations governing the content, grading, time, place, and method of conducting the examinations and may adopt the examinations and recommended grading procedures of the National Council of Architectural Registration Boards.

History. Acts 1941, No. 270, § 4; 1971, No. 582, § 2; A.S.A. 1947, § 71-304; Acts 1993, No. 1219, § 2.

17-15-305. Certification generally.

(a) Upon payment of the proper fee under this chapter, the Arkansas State Board of Architects, Landscape Architects, and Interior Designers shall issue a certificate of registration and license to an applicant who:

(1) In the opinion of the board, has satisfactorily met all the requirements of this chapter; or

(2)(A) Has been previously issued certificates of registration and license by a body created under legislative enactment of the State of Arkansas.

(B) Certificates shall show a license number and the full name of the registrant and shall bear the signatures of the president and secretary and the seal of the board.

(b)(1) Issuance of a certificate of registration by the board is evidence that the person named in the certificate of registration is entitled to all the rights and privileges of a registered architect while the certificate remains unexpired and unrevoked.

(2) Certification is synonymous with registration, with the full meaning and effect of a license to practice architecture.

(c) Certificates of registration shall expire on July 31 of each year and shall become invalid on that date unless renewed.

(d) Renewal may be effected at any time during the month of July by payment of the renewal fee under § 17-15-311.

(e) Upon issuing the initial certificate of registration, the board shall include a copy of the Arkansas Architectural Act, § 17-15-101 et seq. The licensee shall return a signed form to the board stating that he or she has read and understands the Arkansas Architectural Act, § 17-15-101 et seq.

History. Acts 1941, No. 270, § 6; A.S.A. 1947, § 71-306; Acts 1999, No. 1338, § 4; 2009, No. 1367, § 8.

Amendments. The 2009 amendment substituted “board” for “examining body” throughout the section; in (a), inserted “Landscape Architects, and Interior De-

signers” in the introductory language; subdivided (a)(2), deleted “examining” preceding “body” in (a)(2)(A), and substituted “license number” for “serial number” in (a)(2)(B); subdivided (b); and made related and minor stylistic changes.

17-15-306. [Repealed.]

Publisher’s Notes. This section, concerning associate architects’ temporary licenses, was repealed by 2009 Acts, No.

1367, § 9. The section was derived from Acts 1941, No. 270, § 5; 1971, No. 582, §§ 3-5; A.S.A. 1947, § 71-305.

17-15-307. Official seal.

(a) Upon registration, each registrant hereunder shall obtain a seal of such design as the Arkansas State Board of Architects, Landscape Architects, and Interior Designers shall authorize and direct. Plans and specifications prepared by, or under the direct supervision of, a registered architect shall be stamped with this seal during the life of the registrant’s certificate. It shall be unlawful for anyone to stamp or seal any documents with the seal after the certificate of the registrant named thereon has expired or has been revoked unless the certificate shall have been renewed or reissued.

(b) No official of this state, or of any county, city, town, or village, now or hereafter charged with the enforcement of laws, ordinances, or regulations relating to the construction or alteration of buildings, shall accept or approve any plans or specifications which have not been prepared and submitted in full accord with all the provisions of this chapter. Nor shall any payment be approved by any public body for any work, the plans and specifications for which have not been so prepared and signed and sealed by the author.

History. Acts 1941, No. 270, § 6[6A]; A.S.A. 1947, § 71-307.

17-15-308. Grounds for revocation.

The Arkansas State Board of Architects, Landscape Architects, and Interior Designers may revoke the certificate of registration and license of an architect upon proof that:

(1) The holder of the certificate of registration or license is practicing in violation of this chapter or of the proper rules of the board governing this chapter;

(2) The license or certificate of registration has been obtained by fraud or misrepresentation or the person named therein has obtained it by fraud or misrepresentation;

(3) Money other than the regular fees provided for has been paid for the license or certificate of registration;

(4) The holder of the license or certificate of registration is falsely impersonating a practitioner or former practitioner of a like or different name or is practicing under an assumed or fictitious name;

(5) The holder of the license or certificate of registration has been guilty of a felony;

(6) The holder of the license or certificate of registration has aided or abetted in the practice of architecture a person not duly authorized to practice architecture under this chapter;

(7) The holder of the license or certificate of registration has been guilty of fraud or deceit or of gross negligence or misconduct in the practice of architecture;

(8) The holder of the certificate of registration or license has been guilty of gross incompetency or recklessness in the construction or designing of buildings;

(9) The holder of the license or certificate of registration affixed or permitted to be affixed his or her seal or name to any plans, specifications, drawings, or related documents that were not prepared by him or her or under his or her responsible supervisory control; or

(10) The holder of the license or certificate of registration has been adjudged mentally incapable by a court of competent jurisdiction.

History. Acts 1941, No. 270, § 10; 1971, No. 582, § 7; A.S.A. 1947, § 71-310; Acts 2009, No. 1367, § 10.

Amendments. The 2009 amendment inserted "Landscape Architects, and Interior Designers" in the introductory lan-

guage; in (1), deleted "and regulations" following "rules," and substituted "board" for "examining body"; and made numerous minor stylistic changes throughout the section.

RESEARCH REFERENCES

Ark. L. Rev. Administrative License Revocation in Arkansas, 14 Ark. L. Rev. 139.

17-15-309. Revocation proceedings.

(a)(1) A person may prefer charges of fraud, deceit, gross negligence, incompetency, or misconduct against a registrant.

(2) The charges shall be:

(A) In writing;

(B) Sworn to by the person making them; and

(C) Filed with the Secretary of the Arkansas State Board of Architects, Landscape Architects, and Interior Designers.

(b) All charges deemed worthy of consideration by the board shall be heard by the board within three (3) months after the date upon which they are received by the secretary.

(c)(1) The time and place for the hearing shall be fixed by the board.

(2) A copy of the charges, together with a notice of the time and place of hearing, shall be personally served on the registrant accused or shall be mailed to the registrant at his or her last known address at least thirty (30) days before the date fixed for the hearing.

(3) At the hearing, the accused registrant shall have the right to:

(A) Appear personally and by counsel;

(B) Cross-examine witnesses appearing against him or her; and

(C) Produce evidence and witnesses in his or her own defense.

(d) If after the hearing four (4) or more members of the board vote in favor of finding the accused guilty, the board shall revoke the certificate of registration and license of the architect.

History. Acts 1941, No. 270, § 10; A.S.A. 1947, § 71-310; Acts 2009, No. 1367, § 10.

Publisher's Notes. This section may be affected by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

Amendments. The 2009 amendment

substituted "board" for "examining body" throughout the section; subdivided (a) and inserted "Landscape Architects, and Interior Designers" in (a)(2)(C); subdivided (c); and made related and minor stylistic changes.

17-15-310. Reissuance of certificate of registration.

The Arkansas State Board of Architects, Landscape Architects, and Interior Designers may reissue a certificate of registration to a person whose certificate of registration has lapsed or has been suspended or revoked, if no charges of violation of this act are pending in any court of record in this state and three (3) or more members of the board vote in favor of reissuance.

History. Acts 1941, No. 270, § 10; A.S.A. 1947, § 71-310; Acts 2009, No. 1367, § 10.

Amendments. The 2009 amendment rewrote the section.

17-15-311. Fees.

(a) For the purpose of defraying the expenses of the Arkansas State Board of Architects, Landscape Architects, and Interior Designers and as required for carrying out the provisions of this chapter, the following fees and penalties shall be paid by an architect licensed under this chapter:

(1) For an application for examination and registration, an amount to be fixed by the board that shall at no time exceed the sum of three hundred fifty dollars (\$350);

(2) For a certificate of registration by exemption, or by transfer of registration from another state or country, an amount to be fixed by the board that shall at no time exceed the sum of three hundred fifty dollars (\$350);

(3) For annual renewal of the registration certificate, an amount to be fixed by the board that shall at no time exceed the sum of two hundred fifty dollars (\$250);

(4) For the restoration of a revoked certificate of registration or revoked corporate registration, an amount to be fixed by the board that shall at no time exceed the annual renewal fees in effect plus a penalty of fifty dollars (\$50.00) for each month for the first three (3) months during which time the certificate of registration or corporation registration has been revoked. Thereafter, an additional penalty of one hundred dollars (\$100) for the balance of one (1) year for a maximum penalty of two hundred fifty dollars (\$250) per year for a maximum of three (3) years;

(5) For a certificate of registration for a corporation, an amount to be fixed by the board that shall at no time exceed the sum of three hundred fifty dollars (\$350); and

(6)(A) For the issuing of an emeritus license, an amount to be fixed by the board that shall at no time exceed the sum of fifty dollars (\$50).

(B) An emeritus license may be issued by the board to an architect who:

- (i) Is at least sixty-five (65) years of age;
- (ii) Has retired; and
- (iii) Does not practice architecture.

(b)(1) All fees must accompany applications.

(2) No part of these fees shall be refunded except such part as may be refunded when a certificate of registration is not issued, as may be provided under the rules of the board.

(c) It is unlawful for an unregistered person to collect a fee for architectural services, except as an employee collecting a fee as a representative of a registered architect who has performed architectural services.

(d) The fee for a duplicate license shall not exceed one hundred dollars (\$100).

History. Acts 1941, No. 270, § 9; 1971, No. 582, § 6; A.S.A. 1947, § 71-309; Acts 1991, No. 167, § 1; 1993, No. 578, § 3; 2009, No. 1367, § 10.

Amendments. The 2009 amendment rewrote the section.

17-15-312. Practice by architect not registered in Arkansas.

This chapter shall not be construed to prevent:

(1) A nonresident who holds the certification issued by the National Council of Architectural Registration Boards from offering to render the professional services involved in the practice of architecture, if for every project the person is involved in, he or she notifies the Arkansas State Board of Architects, Landscape Architects, and Interior Designers in writing that he or she:

(A) Holds a National Council of Architectural Registration Boards certificate and is not currently registered in Arkansas but will be present in Arkansas for the purposes of offering to render architectural services for a single project;

(B) Will deliver a copy of the notice referred to in subdivision (1)(A) of this section to every potential client to whom the applicant offers to render architectural services; and

(C) Promises to apply to the Arkansas State Board of Architects, Landscape Architects, and Interior Designers within thirty (30) days for registration if selected as the architect for the project;

(2) A person who holds the certification issued by the National Council of Architectural Registration Boards but who is not currently registered in Arkansas from seeking an architectural commission by participating in a single architectural design competition for a project in Arkansas, if for every project the person is involved in, the person notifies the Arkansas State Board of Architects, Landscape Architects, and Interior Designers in writing that:

(A) The person holds a National Council of Architectural Registration Boards certificate and is not currently registered in the jurisdiction but will be present in Arkansas for the purpose of participating in an architectural design competition;

(B) The person will deliver a copy of the notice referred to in subdivision (2)(A) of this section to every person conducting an architectural design competition in which the applicant participates; and

(C) The person promises to apply to the Arkansas State Board of Architects, Landscape Architects, and Interior Designers within thirty (30) days after being selected as the architect for the project; and

(3)(A) A person who is not currently registered in this state but who is currently registered in another jurisdiction from providing uncompensated professional services at the scene of an emergency at the request of a public officer, public safety officer, or municipal or county building inspector acting in an official capacity.

(B) "Emergency" means earthquake, eruption, flood, storm, hurricane, or other catastrophe that has been designated as a major disaster or emergency by the President of the United States or the Governor of Arkansas.

(4) An individual who possesses a professional degree in architecture and is enrolled in the Intern Development Program of the National Council of Architectural Registration Boards or under the jurisdiction of the Arkansas State Board of Architects, Landscape Architects, and Interior Designers may use the title "Architectural Intern" or "Intern Architect" to identify himself or herself.

History. Acts 1999, No. 1338, § 5; 2009, No. 1367, § 10.

Amendments. The 2009 amendment substituted "Arkansas State Board of Architects, Landscape Architects, and Interior Designers" for "examining body"

throughout the section; inserted "Landscape Architects, and Interior Designers" in the introductory language of (a)(1) and in (a)(4); subdivided (a)(3); and made related and minor stylistic changes.

CHAPTER 16

ATHLETE AGENTS

SUBCHAPTER.

1. UNIFORM ATHLETE AGENTS ACT.
2. REGISTRATION AND BOND REQUIREMENTS. [REPEALED.]

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-48-101 et seq.

Former subchapter 1, concerning athlete agents, was repealed by Acts 2001, No. 1622, § 18. The subchapter was derived from the following sources:

17-16-101. Acts 1989, No. 544, § 1; 1999, No. 1186, § 1.

17-16-102. Acts 1989, No. 544, § 4; 1999, No. 1186, § 2.

17-16-103. Acts 1989, No. 544, § 5.

17-16-104. Acts 1989, No. 544, § 3.

Effective Dates. Acts 1989, No. 544, § 8: July 1, 1989. Emergency clause provided: "It is hereby found and determined

by the General Assembly that athlete agents who conduct business in this State should be registered with the State of Arkansas; that such agents are not now required to be registered; that such registration requirement should go into effect at the beginning of the next fiscal year; and that unless this emergency clause is adopted this Act might not go into effect until after the beginning of the next fiscal year. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989."

SUBCHAPTER 1 — UNIFORM ATHLETE AGENTS ACT

SECTION.

- 17-16-101. Short title.
17-16-102. Definitions.
17-16-103. Service of process — Subpoenas.
17-16-104. Athlete agents — Registration required — Void contracts.
17-16-105. Registration as athlete agent — Form — Requirements.
17-16-106. Certificate of registration — Issuance or denial — Renewal.
17-16-107, 17-16-108. [Reserved.]
17-16-109. Registration and renewal fees.
17-16-110. Required form of contract.
17-16-111. Notice to educational institution.

SECTION.

- 17-16-112. Student-athlete's right to cancel.
17-16-113. Required records.
17-16-114. Prohibited conduct.
17-16-115. Criminal penalties.
17-16-116. Civil remedies.
17-16-117. Administrative penalty.
17-16-118. Uniformity of application and construction.
17-16-119. Electronic signatures in global and national commerce act.
17-16-120 — 17-16-122. [Reserved.]

17-16-101. Short title.

This subchapter may be cited as the Uniform Athlete Agents Act.

History. Acts 2001, No. 1622, § 1.

Publisher's Notes. As to the repeal of

former § 17-16-101, see the Publisher's Note at the beginning of this subchapter.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Businesses, 24 **U. Ark. Little Rock L. Rev.** 535.
Legislation, 2001 Arkansas General Assembly, Professions, Occupations, and

17-16-102. Definitions.

In this subchapter:

(1) “Agency contract” means an agreement in which a student-athlete authorizes a person to negotiate or solicit on behalf of the student-athlete a professional-sports-services contract or an endorsement contract.

(2) “Athlete agent” means an individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract. The term includes an individual who represents to the public that the individual is an athlete agent. The term does not include a spouse, parent, sibling, grandparent, or guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) “Athletic director” means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.

(4) “Contact” means a communication, direct or indirect, between an athlete agent and a student-athlete, to recruit or solicit the student-athlete to enter into an agency contract.

(5) “Endorsement contract” means an agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any value that the student-athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance.

(6) “Intercollegiate sport” means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics.

(7) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(8) “Professional-sports-services contract” means an agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization, or as a professional athlete.

(9) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) “Registration” means registration as an athlete agent pursuant to this subchapter.

(11) “State” means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(12) “Student-athlete” means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

History. Acts 2001, No. 1622, § 2. former § 17-16-102, see the Publisher’s
Publisher’s Notes. As to the repeal of Note at the beginning of this subchapter.

17-16-103. Service of process — Subpoenas.

By acting as an athlete agent in this State, a nonresident individual appoints the Secretary of State as the individual’s agent for service of process in any civil action in this State related to the individual’s acting as an athlete agent in this State.

History. Acts 2001, No. 1622, § 3. former § 17-16-103, see the Publisher’s
Publisher’s Notes. As to the repeal of Note at the beginning of this subchapter.

17-16-104. Athlete agents — Registration required — Void contracts.

(a) Except as otherwise provided in subsection (b), an individual may not act as an athlete agent in this State without holding a certificate of registration under § 17-16-106.

(b) Before being issued a certificate of registration, an individual may act as an athlete agent in this State for all purposes except signing an agency contract, if:

(1) a student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and

(2) within seven (7) days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this State.

(c) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

History. Acts 2001, No. 1622, § 4. former § 17-16-104, see the Publisher’s
Publisher’s Notes. As to the repeal of Note at the beginning of this subchapter.

17-16-105. Registration as athlete agent — Form — Requirements.

(a) An applicant for registration shall submit an application for registration to the Secretary of State in a form prescribed by the

Secretary of State. An application filed under this section is a public record. The application must be in the name of an individual and, except as otherwise provided in subsection (b), signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:

(1) the name of the applicant and the address of the applicant's principal place of business;

(2) the name of the applicant's business or employer, if applicable;

(3) any business or occupation engaged in by the applicant for the five (5) years next preceding the date of submission of the application;

(4) a description of the applicant's:

(A) formal training as an athlete agent;

(B) practical experience as an athlete agent; and

(C) educational background relating to the applicant's activities as an athlete agent;

(5) the names and addresses of three (3) individuals not related to the applicant who are willing to serve as references;

(6) the name, sport, and last known team for each individual for whom the applicant acted as an athlete agent during the five (5) years next preceding the date of submission of the application;

(7) the names and addresses of all persons who are:

(A) with respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business; and

(B) with respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of five percent (5%) or greater;

(8) whether the applicant or any person named pursuant to paragraph (7) has been convicted of a crime that, if committed in this State, would be a crime involving moral turpitude or a felony, and identify the crime;

(9) whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph (7) has made a false, misleading, deceptive, or fraudulent representation;

(10) any instance in which the conduct of the applicant or any person named pursuant to paragraph (7) resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;

(11) any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to paragraph (7) arising out of occupational or professional conduct; and

(12) whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to paragraph (7) as an athlete agent in any State.

(b) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another

State, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (a). The Secretary of State shall accept the application and the certificate from the other State as an application for registration in this State if the application to the other State:

(1) was submitted in the other State within six (6) months next preceding the submission of the application in this State and the applicant certifies that the information contained in the application is current;

(2) contains information substantially similar to or more comprehensive than that required in an application submitted in this State; and

(3) was signed by the applicant under penalty of perjury.

History. Acts 2001, No. 1622, § 5.

17-16-106. Certificate of registration — Issuance or denial — Renewal.

(a) The Secretary of State shall issue a certificate of registration to an individual who complies with § 17-16-105(a) or whose application has been accepted under § 17-16-105(b).

(b) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the Secretary of State. The application for renewal must be signed by the applicant under penalty of perjury and must contain current information on all matters required in an original registration.

(c) An individual who has submitted an application for renewal of registration or licensure in another State, in lieu of submitting an application for renewal in the form prescribed pursuant to subsection (d), may file a copy of the application for renewal and a valid certificate of registration or licensure from the other State. The Secretary of State shall accept the application for renewal from the other State as an application for renewal in this State if the application to the other State:

(1) was submitted in the other State within six (6) months next preceding the filing in this State and the applicant certifies the information contained in the application for renewal is current;

(2) contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this State; and

(3) was signed by the applicant under penalty of perjury.

(d) A certificate of registration or a renewal of a registration is valid for two (2) years.

History. Acts 2001, No. 1622, § 6.

17-16-107, 17-16-108. [Reserved.]

Publisher's Notes. Section 7 of the Uniform Athlete Agents Act, which concerns suspension, revocation, or refusal to renew registration, and Section 8 of the

Uniform Athlete Agents Act, which concerns temporary registration, were not adopted in Arkansas.

17-16-109. Registration and renewal fees.

(a) An application for registration or renewal of registration must be accompanied by a fee in the following amount:

(1) five hundred dollars (\$500) for an initial application for registration;

(2) one hundred dollars (\$100) for an application for registration based upon a certificate of registration or licensure issued by another State;

(3) five hundred dollars (\$500) for an application for renewal of registration; or

(4) one hundred dollars (\$100) for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another State.

(b) Fees received under this chapter by the Secretary of State shall be deposited in the State Treasury to the credit of the General Revenue Fund.

History. Acts 2001, No. 1622, § 7.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Businesses, 24 U. Ark. Little Rock L. Rev. Legislation, 2001 Arkansas General Assembly, Professions, Occupations, and 535.

17-16-110. Required form of contract.

(a) An agency contract must be in a record, signed or otherwise authenticated by the parties.

(b) An agency contract must state or contain:

(1) the amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;

(2) the name of any person not listed in the application for registration or renewal of registration who will be compensated because the student-athlete signed the agency contract;

(3) a description of any expenses that the student-athlete agrees to reimburse;

(4) a description of the services to be provided to the student-athlete;

(5) the duration of the contract; and

(6) the date of execution.

(c) An agency contract must contain, in close proximity to the signature of the student-athlete, a conspicuous notice in boldface type in capital letters stating:

WARNING TO STUDENT-ATHLETE

IF YOU SIGN THIS CONTRACT:

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;

(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

(d) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

(e) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student-athlete at the time of execution.

History. Acts 2001, No. 1622, § 8.

17-16-111. Notice to educational institution.

(a) Within seventy-two (72) hours after entering into an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student-athlete is enrolled or the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

(b) Within seventy-two (72) hours after entering into an agency contract or before the next athletic event in which the student-athlete may participate, whichever occurs first, the student-athlete shall inform the athletic director of the educational institution at which the student-athlete is enrolled that he or she has entered into an agency contract.

History. Acts 2001, No. 1622, § 9.

17-16-112. Student-athlete's right to cancel.

(a) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within fourteen (14) days after the contract is signed.

(b) A student-athlete may not waive the right to cancel an agency contract.

(c) If a student-athlete cancels an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

History. Acts 2001, No. 1622, § 10.

17-16-113. Required records.

(a) An athlete agent shall retain the following records for a period of five (5) years:

(1) the name and address of each individual represented by the athlete agent;

(2) any agency contract entered into by the athlete agent; and

(3) any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.

(b) Records required by subsection (a) to be retained are open to public inspection during normal business hours.

History. Acts 2001, No. 1622, § 11.

17-16-114. Prohibited conduct.

(a) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:

(1) give any materially false or misleading information or make a materially false promise or representation;

(2) furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or

(3) furnish anything of value to any individual other than the student-athlete or another registered athlete agent.

(b) An athlete agent may not intentionally:

(1) initiate contact with a student-athlete unless registered under this subchapter;

(2) refuse or fail to retain or permit inspection of the records required to be retained by § 17-16-113;

(3) fail to register when required by § 17-16-104;

(4) provide materially false or misleading information in an application for registration or renewal of registration;

(5) predate or postdate an agency contract; or

(6) fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

History. Acts 2001, No. 1622, § 12.

17-16-115. Criminal penalties.

An athlete agent who violates § 17-16-114 is guilty of a Class A misdemeanor.

History. Acts 2001, No. 1622, § 13.

17-16-116. Civil remedies.

(a) With respect to any athlete agent who has had either a criminal or administrative penalty imposed against him or her under the Uniform Athlete Agents Act, § 17-16-101 et seq., as adopted by the State of Arkansas or any other State, in two (2) or more prior instances:

(1) an educational institution has a right of action against an athlete agent or a former student-athlete for damages caused by a violation of this subchapter. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees;

(2) damages of an educational institution under paragraph (1) include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of this subchapter or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization;

(3) a right of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student-athlete; and

(4) any liability of the athlete agent or the former student-athlete under this section is several and not joint.

(b) This subchapter does not restrict rights, remedies, or defenses of any person under law or equity.

History. Acts 2001, No. 1622, § 14.

17-16-117. Administrative penalty.

The Attorney General may seek a civil penalty, in any court of competent jurisdiction, against an athlete agent not to exceed fifty thousand dollars (\$50,000) for a violation of this subchapter.

History. Acts 2001, No. 1622, § 15.

17-16-118. Uniformity of application and construction.

In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

History. Acts 2001, No. 1622, § 16.

Meaning of “this act”. Acts 2001, No. 1622, codified as § 17-16-101 et seq.

17-16-119. Electronic signatures in global and national commerce act.

The provisions of this subchapter governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.

History. Acts 2001, No. 1622, § 17.

U.S. Code. Section 102 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), referred to in this section, is codified as 15 U.S.C. § 7002. The Electronic Signatures in Global and National Commerce Act is codified as 15 U.S.C. § 7001 et seq.

17-16-120 — 17-16-122. [Reserved.]

Publisher’s Notes. Section 20 of the Uniform Athlete Agents Act, concerning severability, Section 21 of the Uniform Athlete Agents Act, and Section 22 of the

Uniform Athlete Agents Act, concerning the effective date, were not adopted in Arkansas.

SUBCHAPTER 2 — REGISTRATION AND BOND REQUIREMENTS

SECTION.
17-16-201 — 17-16-207. [Repealed.]

17-16-201 — 17-16-207. [Repealed.]

Publisher’s Notes. This subchapter, concerning registration and bond requirements for athlete agents, was repealed by Acts 2001, No. 1622, § 19. The subchapter was derived from the following sources:

17-16-201. Acts 1989, No. 544, § 2;
1999, No. 1186, §§ 3, 4.

17-16-202. Acts 1989, No. 544, § 2.
17-16-203. Acts 1989, No. 544, § 2.
17-16-204. Acts 1999, No. 1186, § 5.
17-16-205. Acts 1999, No. 1186, § 6.
17-16-206. Acts 1999, No. 1186, § 7.
17-16-207. Acts 1999, No. 1186, § 8.
For present law, see § 17-16-101 et seq.

CHAPTER 17
AUCTIONEERS

- SUBCHAPTER.
- 1. GENERAL PROVISIONS.
 - 2. AUCTIONEER’S LICENSING BOARD.
 - 3. LICENSING.
 - 4. AUCTIONEER EDUCATION AND RECOVERY FUND.
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Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-15-101 et seq.

Effective Dates. Acts 1989, No. 266, § 23: Mar. 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that there is a definite and critical shortage of qualified auctioneers in the State of Arkansas, that there is presently no law protecting the public in

the listing and selling of property through auctioneers, and that the best interest of the people of the State of Arkansas can be served by the creation and operation of an Auctioneer's Licensing Board. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Liability of auctioneer under doctrine of strict products liability. 83 A.L.R.4th 1188.

Am. Jur. 7 Am. Jur. 2d, Auctions, § 3 et seq.

C.J.S. 7A C.J.S., Auctions, § 3 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-17-101. Title.
- 17-17-102. Legislative intent.
- 17-17-103. Definitions.
- 17-17-104. Applicability — Exception.
- 17-17-105. License required — Penalty for violation.
- 17-17-106. Actions by auctioneers.

SECTION.

- 17-17-107. Municipal taxes.
- 17-17-108 — 17-17-111. [Repealed.]
- 17-17-112. Written contract.
- 17-17-113. Injunction.
- 17-17-114. Civil penalty.
- 17-17-115. Inspection — Cease and desist.

Cross References. Cities and incorporated towns may also tax auctioneers, § 26-77-204.

County tax, § 26-76-202.

Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Publisher's Notes. Former §§ 17-15-101 — 17-15-103, 17-15-105 — 17-15-111, concerning auctioneers, were repealed by Acts 1989, No. 266, § 20. They were derived from the following sources:

17-15-101. Rev. Stat., ch. 17, § 1; C. & M. Dig., § 630; Pope's Dig., § 671; A.S.A. 1947, § 71-401.

17-15-102. Rev. Stat., ch. 17, §§ 2, 3; C. & M. Dig., §§ 631, 632; Pope's Dig., §§ 672, 673; A.S.A. 1947, §§ 71-402, 71-403.

17-15-103. Rev. Stat., ch. 17, § 12; C. & M. Dig., § 633; Pope's Dig., § 674; A.S.A. 1947, § 71-404.

17-15-105. Rev. Stat., ch. 17, § 21; C. &

M. Dig., § 642; Pope's Dig., § 683; A.S.A. 1947, § 71-413.

17-15-106. Rev. Stat., ch. 17, § 22; C. & M. Dig., § 643; Pope's Dig., § 684; A.S.A. 1947, § 71-414.

17-15-107. Rev. Stat., ch. 17, §§ 13-15; C. & M. Dig., §§ 634-636; Pope's Dig., §§ 675-677; A.S.A. 1947, §§ 71-405 — 71-407.

17-15-108. Rev. Stat., ch. 17, § 16; C. & M. Dig., § 637; Acts 1921, No. 480, § 1; Pope's Dig., § 678; Acts 1961, No. 496, § 1; A.S.A. 1947, § 71-408.

17-15-109. Rev. Stat., ch. 17, § 17; C. & M. Dig., § 638; Pope's Dig., § 679; A.S.A. 1947, § 71-409.

17-15-110. Rev. Stat., ch. 17, § 18; C. & M. Dig., § 639; Pope's Dig., § 680; A.S.A. 1947, § 71-410.

17-15-111. Rev. Stat., ch. 17, §§ 19, 20, 23; C. & M. Dig., §§ 640, 641, 643; Pope's Dig., §§ 681, 682, 684; A.S.A. 1947, §§ 71-411, 71-412, 71-415.

17-17-101. Title.

This chapter shall be known and cited as the "Auctioneer's Licensing Act".

History. Acts 1989, No. 266, § 2.

CASE NOTES**Public Auctioneer.**

An auctioneer who sells only his own goods at his place of business at auction is not a public auctioneer and is not required

to pay the license fee required of auctioneers. State ex rel. Garland County v. Balesh, 180 Ark. 204, 21 S.W.2d 163 (1929) (decision under prior law).

17-17-102. Legislative intent.

It is hereby found and determined by the General Assembly that the current law pertaining to auctioneers is out of date and is not being enforced, there is no administrative agency to enforce the laws pertaining to auctioneers, Arkansas does not have the ability, without legislation, to enter into reciprocal agreements with other states to allow the persons licensed as auctioneers in Arkansas to engage in the business of auctioneering in other states, auctioneers are not required to establish an escrow account to handle money belonging to others, and without legislation the level of professionalism desired by auctioneers cannot be attained. Therefore, it is the purpose of this chapter to establish a board to license and regulate auctioneers, other than livestock auction barn auctioneers and auctioneers conducting certain kinds of auctions.

History. Acts 1989, No. 266, § 1.

Publisher's Notes. As to repeal of

former section, see Publisher's Note at the beginning of the subchapter.

17-17-103. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Auctioneer" means any person who, for a fee, commission, or any other valuable consideration, or with the intention or expectation of receiving the same, by the means of, or process of, an auction or sale at auction, offers, negotiates, or attempts to negotiate, a listing contract, sale, purchase, or exchange of goods, chattels, merchandise, or personal property, or of any other commodity which may lawfully be kept or offered for sale by or at public auction;

(2) "Board" means the Auctioneer's Licensing Board;

(3) "Goods" means any chattels, goods, merchandise, or personal property, or commodities of any form or type which may be lawfully kept or offered for sale;

(4) "Livestock auction barn" means a place where livestock is sold on a regular basis to the public;

(5) “Livestock auction barn auctioneer” means an auctioneer who is solely engaged in the selling of livestock on a regular basis at one (1) or more locations; and

(6) “Persons” includes individuals, associations, partnerships, and corporations, and the word “persons” shall also include the officers, directors, and employees of a corporation.

History. Acts 1989, No. 266, § 3.

former section, see Publisher’s Note at the beginning of the subchapter.

Publisher’s Notes. As to repeal of

17-17-104. Applicability — Exception.

(a) This chapter does not apply to:

(1) Sales at an auction conducted by or under the direction of a public authority or pursuant to a judicial order or decree or to a sale by law required to be at auction;

(2) An auction conducted by or for a nonprofit organization;

(3) An individual who offers his or her own goods for auction;

(4) A livestock auction barn auctioneer; or

(5) An auction conducted over the Internet by means of a website dedicated primarily to conducting auctions.

(b)(1) An auctioneer may work for an auction company that is licensed in the State of Arkansas in an emergency for a period of ninety (90) days.

(2) During the ninety-day period, the auctioneer shall make application and pay fees for the next testing date.

(3) After the ninety-day period, the auctioneer shall meet all of the provisions of this chapter.

History. Acts 1989, No. 266, § 4; 2009, No. 183, § 1.

A.C.R.C. Notes. Former § 17-17-104 has been recodified as § 17-17-304(b)(2).

Amendments. The 2009 amendment, in (a), deleted “or any auction held on the

premises of a livestock auction barn” following “auctioneer” in (a)(4), and inserted (a)(5); subdivided (b), rewrote (b)(2), and added (b)(3); and made related and minor stylistic changes.

17-17-105. License required — Penalty for violation.

(a) On and after July 1, 1989, it shall be unlawful for any person to act as an auctioneer or to advertise or to assume to act as either within this state without a license issued by the Auctioneer’s Licensing Board.

(b) Any person who violates subsection (a) of this section shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or by imprisonment for a term not to exceed ninety (90) days, or both.

History. Acts 1989, No. 266, §§ 4, 19.

Publisher’s Notes. As to repeal of

former section, see Publisher’s Note at the beginning of the subchapter.

CASE NOTES

Public Auctioneer.

An auctioneer who sells only his own goods at his place of business at auction is not a public auctioneer and is not required to pay the license fee required of auctioneers. *State ex rel. Garland County v. Balesh*, 180 Ark. 204, 21 S.W.2d 163 (1929) (decision under prior law).

17-17-106. Actions by auctioneers.

No person engaged in the business of or acting in the capacity of an auctioneer shall bring or maintain any action in the courts of the State of Arkansas for the collection of compensation for any services permitted as an auctioneer without first alleging and proving that he or she was operating legally under the provisions of this chapter and was a duly licensed auctioneer at the time the alleged cause of action arose.

History. Acts 1989, No. 266, § 15.

former section, see Publisher's Note at the beginning of the subchapter.

Publisher's Notes. As to repeal of

17-17-107. Municipal taxes.

No person following for a livelihood the profession of an auctioneer shall be taxed or made liable to pay any municipal or other corporation tax or license fee for the privilege of following or carrying on the profession by a municipality unless that person maintains a business office within that municipality.

History. Acts 1989, No. 266, § 18.

former section, see Publisher's Note at the beginning of the subchapter.

Publisher's Notes. As to repeal of

17-17-108 — 17-17-111. [Repealed.]

Publisher's Notes. As to repeal of these sections, see Publisher's Note at the beginning of the subchapter.

17-17-112. Written contract.

(a) An auctioneer may not sell the property of another at auction without a prior written contract with the seller which sets forth the terms and conditions upon which the auctioneer will sell the property. The licensee must retain a copy of each contract for at least three (3) years after the auction.

(b) The Auctioneer's Licensing Board is authorized to prescribe by regulations the minimum requirements which must be included in a written contract.

History. Acts 1999, No. 1333, § 1.

17-17-113. Injunction.

(a) Whenever there is reason to believe that any person, licensed or unlicensed, has violated any provision of this chapter or any order, license, decision, demand, or requirement issued or made pursuant to this chapter, the Auctioneer's Licensing Board or its authorized representative may bring an action in the circuit court of any county in which the person resides or does business to enjoin such a person from continuing such a violation or engaging therein or doing any act or acts in furtherance thereof.

(b) Whenever there is any action brought pursuant to this section, the circuit court shall have jurisdiction and authority to enter a preliminary or final injunction or such other relief as may be appropriate.

History. Acts 1999, No. 1333, § 2.

circuit courts, Ark. Const. Amend. 80, §§ 6,

Cross References. Jurisdiction of cir-

19.

17-17-114. Civil penalty.

(a)(1) Whenever the Auctioneer's Licensing Board finds that the holder of a license issued by the board is guilty of a violation of the rules of the board or the laws of the State of Arkansas pertaining to any occupation, profession, or business licensed or regulated by the board, it shall have the power and authority to impose a civil penalty and suspension or revocation of the license.

(2) Upon imposition of a civil penalty, the board shall have the power and authority to require that the licensee pay a penalty to the board in regard to the violation with the sanction that the license may be suspended until the penalty is paid.

(3) Before the imposition of any penalty, the board shall hold an investigation and hearing after notice to a licensee or his or her attorney. The penalty may be imposed only if the board formally finds that the public health, safety, welfare, and morals would not be impaired thereby and that payment of the penalty will achieve the desired disciplinary result.

(b) No penalty imposed by the board may exceed a total of one thousand dollars (\$1,000). The power and authority of the board to impose these penalties shall not be affected by any other civil or criminal proceeding concerning the same violation.

(c) If any person upon whom the board has levied a civil penalty fails to pay the civil penalty within sixty (60) days of the board's decision to impose the penalty, the amount of the fine shall be considered to be a debt owed to the board and may be collected by civil action by the board.

(d) Any person penalized by the board under this chapter may appeal any order of the board in the manner now provided by law.

(e) In addition to any other sanctions authorized by this chapter, the board may impose a civil penalty as provided in this section against any unlicensed person, firm, or corporation practicing or offering to practice

any actions requiring licensure pursuant to the provisions of this chapter.

(f) The board is authorized to promulgate regulations to implement the provisions of this chapter.

History. Acts 1999, No. 1333, § 3;
2003, No. 1748, § 1.

17-17-115. Inspection — Cease and desist.

(a) Subsequent to five (5) days after proof of receipt of certified mail by the alleged offending auctioneer or auction house of any alleged violation or violations, the Auctioneer's Licensing Board or its authorized representative may enter the premises of any auction or auction house for the purpose of examining the license of an auctioneer or auction house, or both.

(b) Should the board or its authorized representative find that an unlicensed auctioneer or auction house, or both, is practicing or offering to practice any actions requiring a license pursuant to the provisions of this chapter, the board or its authorized representative has the authority to demand that such unlicensed activity cease and desist immediately.

(c) Any auctioneer or auction house, or both, refusing to allow the board or its authorized representative to inspect the premises of an auction or auction house for the purpose of examining the license of the auctioneer or auction house, or both, may be subject to a civil penalty.

(d) Any unlicensed auctioneer or auction house, or both, found to be practicing or offering to practice any actions requiring a license pursuant to the provisions of this chapter who refuses to cease and desist such unlicensed activity upon the request of the board or its authorized representative will be subject to criminal or civil penalties, or both.

History. Acts 1999, No. 1333, § 4.

SUBCHAPTER 2 — AUCTIONEER'S LICENSING BOARD

SECTION.

- 17-17-201. Creation — Members.
- 17-17-202. Organization.
- 17-17-203. Employees — Supplies.
- 17-17-204. Secretary-treasurer — Disposition of funds.
- 17-17-205. Finances — Educational programs.

SECTION.

- 17-17-206. List of licensees.
- 17-17-207. Rules and regulations.
- 17-17-208. Proceedings.
- 17-17-209. Seal — Records.

Publisher's Notes. Former subchapter 2, concerning the auction of watches and diamonds, was repealed by Acts 1989, No. 266, § 20. The former subchapter was

derived from the following sources:

- 17-15-201. Acts 1943, No. 182, § 4;
A.S.A. 1947, § 71-419.
- 17-15-202. Acts 1943, No. 182, § 1;

A.S.A. 1947, § 71-416.

17-15-203. Acts 1943, No. 182, § 3;
A.S.A. 1947, § 71-418.

17-15-204. Acts 1943, No. 182, § 2;
A.S.A. 1947, § 71-417.

17-15-205. Acts 1943, No. 182, § 5;
A.S.A. 1947, § 71-420.

Effective Dates. Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas

Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-17-201. Creation — Members.

(a) There is hereby created the Auctioneer's Licensing Board. The Governor shall appoint a board consisting of seven (7) members, four (4) of whom are licensed auctioneers and three (3) from the public at large, each of whom immediately prior to the date of his or her appointment has been a resident of the State of Arkansas for five (5) years.

(b) The four (4) members who are auctioneers shall have been auctioneers for at least five (5) years.

(c) Each member shall serve until his or her successor is appointed and qualified. All successor members shall serve terms of four (4) years and until their successors are elected and qualified.

(d) Vacancies shall be filled by appointment of the Governor for the unexpired term.

(e) Each member of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1989, No. 266, § 6; 1997, No. 250, § 125.

Publisher's Notes. Acts 1989, No. 266, § 6 provided, in part, that the Governor should appoint the initial members of the

board on March 1, 1989, and that two members should be appointed for one-year terms, two members for two-year terms, two members for three-year terms and one member for a term of four years.

17-17-202. Organization.

(a) The Auctioneer's Licensing Board, immediately upon qualification of the member appointed in each year, shall organize by selecting from its members a chair.

(b) A quorum of the board shall be four (4) members.

History. Acts 1989, No. 266, § 6.

17-17-203. Employees — Supplies.

(a) The Auctioneer's Licensing Board shall have full authority to employ and discharge a secretary who shall also be the treasurer, and such other personnel as may be necessary to administer and enforce the provisions of this chapter.

(b) The board shall obtain office space, furniture, stationery, and other proper supplies and conveniences reasonably necessary to carry out the provisions of this chapter.

History. Acts 1989, No. 266, § 6.

17-17-204. Secretary-treasurer — Disposition of funds.

(a) All fees, charges, and penalties collected by the Auctioneer's Licensing Board under the provisions of this chapter shall be paid to the Secretary-treasurer of the Auctioneer's Licensing Board, who shall be the custodian of all funds and shall deposit them in a bank or banks to be designated by the board.

(b) The secretary-treasurer shall execute a bond in an amount determined by the State Risk Manager pursuant to the self-insured fidelity program as authorized in § 21-2-701 et seq.

(c)(1) The secretary-treasurer shall pay funds of the board only on vouchers signed by himself or herself and countersigned by the Chair of the Auctioneer's Licensing Board.

(2) The total expenses for all purposes and obligations of the board shall not exceed the total fees, charges, penalties, and other funds paid to the board under the provisions of this chapter.

(d) The secretary-treasurer shall make semiannual financial reports in detail to the board not later than January 30 and July 30 of each year, which will be kept on permanent file by the board.

History. Acts 1989, No. 266, § 6; 1999, No. 1333, §§ 5, 6.

A.C.R.C. Notes. The operation of subsection (b) of this section was suspended by adoption of a self-insured fidelity bond program for public officers, officials, and

employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The subsection may again become effective upon cessation of coverage under that program. See § 21-2-703.

17-17-205. Finances — Educational programs.

The Auctioneer's Licensing Board shall be financially self-sustaining, and, if funds permit, it may underwrite, within its financial limitations, educational programs for the enlightenment and benefit of the public and all auctioneers licensed under this chapter.

History. Acts 1989, No. 266, § 6.

17-17-206. List of licensees.

The Auctioneer's Licensing Board shall annually publish a list of the names and addresses of all auctioneers licensed by it pursuant to this chapter. This list shall contain the names of all persons whose licenses have been suspended or revoked within the preceding year as well as any other information relative to the enforcement of the provisions of this chapter that the board may deem of interest to the public.

History. Acts 1989, No. 266, § 6.

17-17-207. Rules and regulations.

The Auctioneer's Licensing Board shall have the authority to promulgate such rules and regulations as may be necessary to implement this chapter and may establish by regulation such forms as may be necessary to administer this chapter.

History. Acts 1989, No. 266, § 6.

17-17-208. Proceedings.

The Auctioneer's Licensing Board shall be subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1989, No. 266, § 13.

17-17-209. Seal — Records.

(a) The Auctioneer's Licensing Board shall adopt a seal by which it shall authenticate its proceedings.

(b) Copies of all records and papers in the office of the board, duly certified and authenticated by the seal of the board, shall be received in evidence in all courts equally and with like effect as the original.

(c) All records kept in the office of the board under the authority of this chapter shall be open to public inspection under such rules and regulations as shall be prescribed by the board.

History. Acts 1989, No. 266, § 14.

SUBCHAPTER 3 — LICENSING

SECTION.

- 17-17-301. Qualifications — Examination.
- 17-17-302. Issuance and renewal — Change of location.
- 17-17-303. [Repealed.]
- 17-17-304. Nonresidents — Licensing generally.
- 17-17-305. Nonresidents — Reciprocity.

SECTION.

- 17-17-306. Nonresidents — Actions against.
- 17-17-307. Auction owners.
- 17-17-308. Suspension or revocation.
- 17-17-309. Investigation by board.
- 17-17-310. Advertisements.
- 17-17-311. Continuing education.
- 17-17-312. Criminal background checks.

A.C.R.C. Notes. Acts 1989, No. 266, § 5 provided: "The provisions herein requiring an applicant to pass a written examination shall not apply to any auctioneer who makes application to the board by July 31, 1990, furnishing satisfactory proof to the board that he actively engaged in the auction business for a period of at least one (1) year prior to the

effective date of this act, or that he has been the principal auctioneer in at least five (5) auctions of personal property during this period of time. The application and proof shall be accompanied by a bond and license fee in accordance with the provisions of this act, and the board will, after review and approval, issue a license to said auctioneer."

17-17-301. Qualifications — Examination.

(a) Auctioneer licenses shall be granted only to persons who are found to be of good reputation, trustworthy, and competent to transact the business of an auctioneer, in such a manner as to safeguard the interest of the public.

(b) The Auctioneer's Licensing Board is authorized to require information from every applicant to determine the applicant's honesty and truthfulness.

(c)(1) In addition to proof of honesty, truthfulness, and good reputation, an examination conducted by the board or its authorized representatives shall be held four (4) times each year, and an examination fee of one hundred dollars (\$100) shall be collected from each applicant to defray the expenses of the examination.

(2) The examination shall include questions on ethics, reading, writing, spelling, elementary arithmetic, and a general knowledge of the laws of Arkansas and the Arkansas Code, including, but not limited to, contracts of sale, agency, leases, auctions brokerage, and the provisions of the Uniform Commercial Code, § 4-1-101 et seq.

(d) In addition to the other qualifications provided for by this chapter, every applicant for an auctioneer's license shall be at least eighteen (18) years of age. Every application for a license shall be submitted on forms prepared by the board.

History. Acts 1989, No. 266, § 7; 1993, No. 1219, § 3; 2003, No. 1748, § 2.

17-17-302. Issuance and renewal — Change of location.

(a)(1) An examination shall not be required for the renewal of any present or future license unless the license has been revoked. In this case, the applicant shall take and pass the written examination offered by the Auctioneer's Licensing Board before a new license may be issued.

(2) Licensed auctioneers have a one-hundred-twenty-day grace period beyond a renewal date to renew a license.

(3)(A) Penalty for late renewals beyond the one-hundred-twenty-day grace period shall be two (2) times the sum of a normal license renewal fee.

(B)(i) The board shall notify a licensee of the penalty in subdivision (a)(3)(A) of this section by first class mail.

(ii) If a licensee does not renew his or her license within thirty (30) days after the notice in subdivision (a)(3)(B)(i) of this section is mailed, the board shall send a second notice by certified mail.

(b)(1)(A) The issuance fee for each auctioneer's license shall be one hundred dollars (\$100).

(B) The annual renewal fee for each license shall be one hundred dollars (\$100).

(C) All licenses shall expire on June 30 of each year.

(2) In the absence of a reason or condition that might warrant the refusal of the renewing of the license and upon receipt of the written request of the applicant and the applicant's annual fee, the board shall issue a new license each ensuing year.

(c) The board shall prepare and deliver to each licensee a license certificate and pocket card.

(d)(1) Notice in writing shall be given to the board by each licensee of any change of business location within thirty (30) days after any change in location, and at that time the board shall issue a new license for the unexpired period.

(2) A change of business location shall automatically cancel the license previously issued.

(3) Changing a business location and issuance of a new license shall entitle the board to collect five dollars (\$5.00).

History. Acts 1989, No. 266, § 8; 2003, No. 1748, § 3; 2009, No. 773, § 1.

Amendments. The 2009 amendment substituted "one-hundred-twenty-day" for

"ninety-day" in (a)(2); inserted (a)(3)(B) and redesignated the remaining text of (a)(3) accordingly; and made minor stylistic changes.

17-17-303. [Repealed.]

Publisher's Notes. This section, concerning a bond, was repealed by Acts

1999, No. 227, § 1. The section was derived from Acts 1989, No. 266, § 9.

17-17-304. Nonresidents — Licensing generally.

(a) A nonresident of this state may become a licensed auctioneer in this state by registering with the Auctioneer's Licensing Board and confirming in writing that his or her actions will be regulated by this chapter and other applicable laws of this state as stated in this section and §§ 17-17-305 and 17-17-306.

(b)(1) In every instance the nonresident must pay the issuance fee, the annual renewal fee, and the Auctioneer Education and Recovery Fund fee.

(2)(A) No person who is not a resident of this state shall conduct any livestock auction in this state unless bonded for at least fifty thousand dollars (\$50,000) by a surety licensed to do business in this state by the Insurance Commissioner.

(B) A violation of this section shall constitute a Class A misdemeanor.

History. Acts 1985, No. 477, § 1; A.S.A. 1947, § 71-413; Acts 1989, No. 266, § 10; 1999, No. 227, § 2.

A.C.R.C. Notes. Acts 1989, No. 266, § 21, provided that nothing in the act

repealed § 17-17-104 as enacted by Acts 1985, No. 477, § 1. Accordingly, that section has been recodified as subdivision (b)(2) of this section.

17-17-305. Nonresidents — Reciprocity.

(a) A person holding a license to engage in auctions issued to him or her by a proper authority of a state, territory, or possession of the United States of America or the District of Columbia having licensing requirements comparable to Arkansas and who in the opinion of the Auctioneer's Licensing Board otherwise meets the requirements of this chapter may upon application be licensed without further examination.

(b)(1) Nothing in this section and §§ 17-17-304 and 17-17-306 shall prevent the conducting of any auction in this state by any nonresident auctioneer if such an auctioneer is duly licensed by the state of his or her residence and that state, through reciprocity, permits a resident of this state who is an auctioneer duly licensed to conduct auctions in this state to conduct auctions in the other state without being required to obtain a license in the other state.

(2) The license fee applicable to a nonresident auctioneer from another state which does not permit an auctioneer who is a resident of this state and who is duly licensed in this state to conduct auctions in the other state without being required to obtain a license in the other state shall be of the same amount that the other state charges auctioneers who are residents of this state and who are duly licensed in this state to obtain a license to conduct an auction in the other state.

(c) Notwithstanding any other provision of law to the contrary, no person duly licensed as an auctioneer in any other state and temporarily present in this state shall conduct an auction in this state unless he or she acts in association with an auctioneer duly licensed in this state if the state in which the nonresident auctioneer is licensed requires such an association with an auctioneer licensed in that state before an auctioneer duly licensed in Arkansas may conduct an auction in that state.

History. Acts 1989, No. 266, § 10; 1991, No. 786, § 22.

Publisher's Notes. Acts 1991, No. 786, § 37, provided: "The enactment and adoption of this Act shall not repeal, expressly or impliedly, the acts passed at the regular session of the 78th General Assembly. All

such acts shall have full effect and, so far as those acts intentionally vary from or conflict with any provision contained in this Act, those acts shall have the effect of subsequent acts and as amending or repealing the appropriate parts of the Arkansas Code of 1987."

17-17-306. Nonresidents — Actions against.

In addition, every nonresident applicant shall file an irrevocable consent that actions may be commenced against the applicant in any court of competent jurisdiction in the State of Arkansas, by the service of any summons, process, or pleading authorized by the law on the secretary of the Auctioneer's Licensing Board. The consent shall stipulate and agree that the service of the process, summons, or pleading on the secretary shall be taken and held in all courts to be as valid and binding as if actual service had been made upon the applicant in Arkansas. In case any summons, process, or pleading is served upon the secretary of the board, it shall be by duplicate copies, one (1) of which shall be retained in the office of the board, and the other immediately forwarded by registered mail to the last known business address of the applicant against whom the summons, process, or pleading may be directed.

History. Acts 1989, No. 266, § 10.

17-17-307. Auction owners.

(a) If an auction owner is one other than the principal auctioneer, the auction owner shall apply for a license and meet all the provisions of this chapter.

(b) When the owner of an auction company or the designated person of a corporation and the auctioneer are one and the same, only one (1) license shall be required.

History. Acts 1989, No. 266, § 16.

17-17-308. Suspension or revocation.

The Auctioneer's Licensing Board may impose a civil penalty or suspend or revoke the license of an auctioneer for any of the following causes:

- (1) Obtaining a license through false or fraudulent representation;
- (2) Pursuing a continued and flagrant course of misrepresentation or making false promises through agents or advertising or otherwise;
- (3) Failing to account for or remit within a reasonable time any money belonging to others that comes into his or her possession;
- (4) Commingling funds of others with his or her own or failing to keep the funds of others in an escrow or trustee account;
- (5) Paying valuable consideration to any person for services performed in violation of this chapter;
- (6) Being convicted of a criminal offense involving moral turpitude or a felony in a court of competent jurisdiction of this or any other jurisdiction;
- (7) Willfully violating a rule or regulation promulgated by the board;

(8) Failing to enter into a written contract with the seller and to furnish voluntarily to the seller at the time of execution copies of all written instruments prepared by the auctioneer, including the contract;

(9) Any conduct of an auctioneer that demonstrates bad faith, dishonesty, incompetency, untruthfulness, or deceptive practices;

(10) Any other conduct that constitutes improper, fraudulent, or dishonest dealings, including falsely accusing any auctioneer or auction house;

(11) Failing to complete or submit the continuing education requirements as specified by this chapter and the rules and regulations adopted by the board; or

(12) Failing to disclose the buyer's premium in all advertising associated with an auction.

History. Acts 1989, No. 266, § 11; 1999, No. 1333, § 7; 1999, No. 1506, § 2; 2001, No. 1258, § 1; 2003, No. 1748, § 4.

17-17-309. Investigation by board.

The Auctioneer's Licensing Board may, upon its own motion, and shall, upon the verified written complaint of any person, investigate the actions of any auctioneer or any person who assumes to act in that capacity, if the complaint, or complaint together with other evidence presented in connection with it if true, would be a violation of this chapter.

History. Acts 1989, No. 266, § 12.

17-17-310. Advertisements.

Each and every advertisement by an auctioneer or consignment auction house shall include the number of the license issued to the auctioneer or auction company by the Auctioneer's Licensing Board.

History. Acts 1989, No. 266, § 17.

17-17-311. Continuing education.

(a) Except as provided in subsection (c) of this section, every application to the Auctioneer's Licensing Board for annual renewal of the license of an auctioneer shall be accompanied by proof that the applicant has satisfactorily completed six (6) hours of continuing education in approved programs within the preceding twelve-month period. No auctioneer's license shall be renewed unless the application for renewal is accompanied by the proof required in this section.

(b) All programs of continuing education for licensed auctioneers shall be subject to approval of the board. The board is authorized to prescribe by regulations the minimum standards and requirements for continuing education programs for auctioneers, the procedures and policies for administering such programs, and the manner and condi-

tions under which credit will be granted for participation in such programs.

(c) The continuing education requirements of this section shall not be applicable to any person who has been licensed as an auctioneer or auction house owner or operator by the board for a period of ten (10) consecutive years or more and who is at least fifty-five (55) years of age.

History. Acts 1999, No. 1506, § 1;
2001, No. 1754, § 1.

17-17-312. Criminal background checks.

(a) Beginning July 16, 2003, each first-time applicant for a license issued by the Auctioneer's Licensing Board and each applicant seeking reinstatement of an expired license from the board shall be required to apply to the Identification Bureau of the Department of Arkansas State Police for a state and national criminal background check to be conducted by the Federal Bureau of Investigation.

(b) The check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the board and shall be responsible to the Department of Arkansas State Police for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the board all information obtained concerning the applicant in the commission of any offense listed in subsection (f) of this section.

(e) At the conclusion of any background check required by this section, the Identification Bureau of the Department of Arkansas State Police shall promptly destroy the fingerprint card of the applicant.

(f) No person shall be eligible to receive or hold a license issued by the board if that person has pleaded guilty or nolo contendere to, or been found guilty of, any of the following offenses by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court:

- (1) Capital murder, as prohibited in § 5-10-101;
- (2) Murder in the first degree and second degree, as prohibited in §§ 5-10-102 and 5-10-103;
- (3) Manslaughter, as prohibited in § 5-10-104;
- (4) Negligent homicide, as prohibited in § 5-10-105;
- (5) Kidnapping, as prohibited in § 5-11-102;
- (6) False imprisonment in the first degree, as prohibited in § 5-11-103;
- (7) Permanent detention or restraint, as prohibited in § 5-11-106;
- (8) Robbery, as prohibited in § 5-12-102;
- (9) Aggravated robbery, as prohibited in § 5-12-103;
- (10) Battery in the first degree, as prohibited in § 5-13-201;
- (11) Aggravated assault, as prohibited in § 5-13-204;
- (12) Introduction of a controlled substance into the body of another person, as prohibited in § 5-13-210;

(13) Terroristic threatening in the first degree, as prohibited in § 5-13-301;

(14) Rape, as prohibited in § 5-14-103;

(15) Sexual indecency with a child, as prohibited in § 5-14-110;

(16) Sexual assault in the first degree, second degree, third degree, and fourth degree, as prohibited in §§ 5-14-124 — 5-14-127;

(17) Incest, as prohibited in § 5-26-202;

(18) Offenses against the family, as prohibited in §§ 5-26-303 — 5-26-306;

(19) Endangering the welfare of an incompetent person in the first degree, as prohibited in § 5-27-201;

(20) Endangering the welfare of a minor in the first degree, as prohibited in § 5-27-203;

(21) Permitting the abuse of a child, as prohibited in § 5-27-221(a);

(22) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child, as prohibited in §§ 5-27-303 — 5-27-305, 5-27-402, and 5-27-403;

(23) Felony adult abuse, as prohibited in § 5-28-103;

(24) Theft of property, as prohibited in § 5-36-103;

(25) Theft by receiving, as prohibited in § 5-36-106;

(26) Arson, as prohibited in § 5-38-301;

(27) Burglary, as prohibited in § 5-39-201;

(28) Felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-608, as prohibited in § 5-64-401;

(29) Promotion of prostitution in the first degree, as prohibited in § 5-70-104;

(30) Stalking, as prohibited in § 5-71-229; and

(31) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection.

(g)(1) The provisions of subsection (f) of this section may be waived by the board upon the request of:

(A) An affected applicant for licensure; or

(B) The person holding a license subject to revocation.

(2) Circumstances for which a waiver may be granted shall include, but not be limited to, the following:

(A) The age at which the crime was committed;

(B) The circumstances surrounding the crime;

(C) The length of time since the crime;

(D) Subsequent work history;

(E) Employment references; and

(F) Character references.

(h)(1) Any information received by the board from the Identification Bureau of the Department of Arkansas State Police under this section shall not be available for examination except by the:

(A) Affected applicant for licensure, or his or her authorized representative; or

(B) Person whose license is subject to revocation, or his or her authorized representative.

(2) No record, file, or document shall be removed from the custody of the Department of Arkansas State Police.

(i) Any information made available to the affected applicant for licensure or to the person whose license is subject to revocation shall be information pertaining to that person only.

(j) Rights of privilege and confidentiality established under this section shall not extend to any document created for purposes other than this background check.

(k) The board shall adopt the necessary rules and regulations to fully implement the provisions of this section.

History. Acts 2003, No. 834, § 1.

SUBCHAPTER 4 — AUCTIONEER EDUCATION AND RECOVERY FUND

SECTION.

17-17-401. Auctioneer Education and Recovery Fund.

17-17-402. Applicability.

17-17-403. Construction.

17-17-404. Additional fee.

17-17-405. Disciplinary hearing — Recovery procedure.

SECTION.

17-17-406. Education.

17-17-407. Jurisdiction.

17-17-408. Appeal.

17-17-409. Subrogation — Suspension of license.

17-17-401. Auctioneer Education and Recovery Fund.

(a) The Auctioneer's Licensing Board shall establish a separate high interest bearing account in a bank located in this state. The account shall be referred to as the "Auctioneer Education and Recovery Fund" and shall only be used for education and recovery purposes as detailed in this chapter.

(b) The fees collected under § 17-17-404 shall be deposited into the Auctioneer Education and Recovery Fund.

History. Acts 1999, No. 227, § 3.

17-17-402. Applicability.

The provisions of this subchapter shall apply only to:

(1) Auctioneers who were licensed at the time of the occurrence of the acts or violations complained of; and

(2) Acts or violations which occur after December 31, 1999.

History. Acts 1999, No. 227, § 3.

17-17-403. Construction.

Nothing in this subchapter shall be construed to limit or restrict in any manner other civil or criminal remedies which may be available to any person.

History. Acts 1999, No. 227, § 3.

17-17-404. Additional fee.

(a) Except as provided in subsection (b) of this section, each auctioneer shall pay to the Auctioneer's Licensing Board at the time of initial licensure and at each annual renewal a fee as the board may require, not to exceed one hundred dollars (\$100). This fee shall be in addition to the other fees provided for in this chapter.

(b) When the balance in the Auctioneer Education and Recovery Fund reaches one hundred eighty thousand dollars (\$180,000), the fee shall be suspended until the fund balance falls to one hundred thousand dollars (\$100,000) at which time the collection of the fee shall resume until the fund balance reaches one hundred eighty thousand dollars (\$180,000).

History. Acts 1999, No. 227, § 3.

17-17-405. Disciplinary hearing — Recovery procedure.

(a)(1) In any disciplinary hearing before the Auctioneer's Licensing Board that involves a licensee who has allegedly violated any provision of this chapter, the board shall first determine whether a violation has occurred.

(2) If so, the board shall then determine the amount of damages, if any, suffered by the aggrieved party or parties. However, damages shall be limited to actual damages in accordance with § 17-17-407.

(3) The board shall then direct the licensee to pay that amount to the aggrieved party or parties.

(4)(A) If that amount has not been paid within thirty (30) calendar days following entry of the board's final order in the matter and the order has not been appealed to the circuit court, then upon request the board shall pay from the Auctioneer Education and Recovery Fund to the aggrieved party or parties the amount specified.

(B) However, the board shall not:

(i) Pay in excess of fifteen thousand dollars (\$15,000) for any one (1) violation or continuing series of violations regardless of the number of licensees who participated in the violation or continuing series of violations; or

(ii) Pay an amount in excess of the fund balance.

(b) The question of whether certain violations constitute a continuing series of violations shall be a matter solely within the discretion and judgment of the board.

(c) Nothing within this subchapter shall obligate the fund for any amount in excess of a total of fifteen thousand dollars (\$15,000) with respect to:

(1) The acts of any one (1) licensee; or

(2) Any group of related claims.

(d) Whether a claim is one (1) of a group of related claims shall be a matter solely within the discretion and judgment of the board.

(e) When unsatisfied or pending claims exceed the limits payable under subsection (c) of this section, the board shall be the sole determinant of how the available funds shall be allocated among such claims.

History. Acts 1999, No. 227, § 3; 2009, (\$15,000)” for “five thousand dollars No. 773, § 2. (\$5,000)” in (a)(4)(B)(i) and the introductory language of (c); and made minor stylistic changes in (a)(1) and (e).

Amendments. The 2009 amendment substituted “fifteen thousand dollars

17-17-406. Education.

The Auctioneer’s Licensing Board, in its discretion, may use any funds in the Auctioneer Education and Recovery Fund in excess of the one-hundred-eighty-thousand-dollar level, regardless of whether it is from the fund fees or accrued interest thereon for any or all of the following purposes:

(1) To carry out the advancement of education in the auction field for the benefit of those licensed under the provisions of this chapter;

(2) To assist in the improvement and efficiency of the auctioneering profession; and

(3) To underwrite educational seminars and other forms of educational projects for the use and benefit of auctioneer licensees.

History. Acts 1999, No. 227, § 3.

17-17-407. Jurisdiction.

(a) The Auctioneer’s Licensing Board’s jurisdiction and authority to award damages to an aggrieved party pursuant to § 17-17-405 is limited to actual compensatory damages. The board shall not award punitive or exemplary damages, nor shall it award interest on damages.

(b) The appellate jurisdiction of the circuit court is limited to the awarding of actual compensatory damages.

(c) The circuit court shall have no authority or jurisdiction to assess punitive or exemplary damages under this subchapter.

(d) The circuit court’s jurisdiction over the Auctioneer Education and Recovery Fund shall be limited to appeals from the board’s orders.

(e) The circuit court shall have no jurisdiction or authority to order payments from the fund in any amount in excess of either:

(1) The amount determined by the board; or

(2) The limits set forth in § 17-17-405.

History. Acts 1999, No. 227, § 3.

17-17-408. Appeal.

(a) An appeal may be taken to the circuit court from a final order of the Auctioneer’s Licensing Board in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) An appeal shall automatically stay that portion of the board’s order which directs the payment of damages, and neither the licensee nor the board shall be obligated to pay the damages to the aggrieved party or parties until such time as the appeal is finally decided, whether in the circuit court or in the Supreme Court.

History. Acts 1999, No. 227, § 3.

17-17-409. Subrogation — Suspension of license.

Upon the payment by the Auctioneer’s Licensing Board of any amount of money under § 17-17-405:

(1) The recipients of the payment, to the extent of the payment, shall assign to the board all rights and claims that they may have against the licensee involved;

(2) The board shall be subrogated to all of the rights of the recipients of the payment to the extent of the payment; and

(3) In addition to any other disciplinary action taken against the licensee on the merits of the hearing, his or her license shall be immediately suspended until he or she has completely reimbursed the board for the payment plus interest at a rate to be determined by the board.

History. Acts 1999, No. 227, § 3.

CHAPTER 18
AUTOMOTIVE PARTS DEALERS

SECTION.
17-18-101. Purpose.
17-18-102. Penalty.
17-18-103. Authority of Department of
Arkansas State Police.

SECTION.
17-18-104. Record of transactions.

Publisher’s Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-16-101 et seq.

17-18-101. Purpose.

The purpose of this chapter is to provide an additional means of preventing theft of motor vehicle parts, tires, and accessories.

History. Acts 1963, No. 108, § 5; A.S.A. 1947, § 75-1805.

17-18-102. Penalty.

A person who violates this chapter or a regulation hereunder shall be fined not less than twenty-five dollars (\$25.00) and not more than five hundred dollars (\$500).

History. Acts 1963, No. 108, § 6; A.S.A. 1947, § 75-1806.

17-18-103. Authority of Department of Arkansas State Police.

The Department of Arkansas State Police is empowered to make and enforce reasonable regulations to effectuate the purpose of this chapter.

History. Acts 1963, No. 108, § 4; A.S.A. 1947, § 75-1804.

17-18-104. Record of transactions.

(a) A person engaged in the wholesale or retail business of dealing in new or used motor vehicle parts, tires, or accessories shall make and keep at the place of business for a period of ninety (90) days, a record of:

(1) All motor vehicle parts, tires, or accessories acquired by such a person by purchase, trade, or pawn from any person other than an authorized dealer in motor vehicle parts, tires, or accessories; and

(2) Each completed transaction made pursuant to such an offer.

(b) The record shall include:

(1) A description of the part, tire, or accessory involved;

(2) A description of the person from whom the part, tire, or accessory was acquired;

(3) A description, including the license number, of any motor vehicle in that person's possession; and

(4) Such other information as may be reasonably required for the purpose of this chapter.

(c) The record shall be kept available at the place of business for inspection by any law enforcement officer.

History. Acts 1963, No. 108, §§ 1-3; A.S.A. 1947, §§ 75-1801 — 75-1803.

CHAPTER 19

BAIL BONDSMEN

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. LICENSING.
3. BOND REQUIREMENTS — POSTING OF BONDSMEN LIST.
4. CONTINUING EDUCATION PROGRAM.

A.C.R.C. Notes. Acts 1989, No. 417, § 2, provided: "Special provisions for previous license.

"(a) Any person who held a license pursuant to Arkansas Code, [former] § 17-17-201 et seq. [repealed], on the effective date of this Act may continue to engage in the bail bond business without licensure under this subchapter for a period of sixty (60) days after the effective date of this Act without being deemed guilty of a violation of Arkansas Code § 17-17-201 et seq.

"(b) Any individual who held a license under Arkansas Code, [former] § 17-17-201 et seq. [repealed], in the effective date of this act and who applies for a license under Arkansas Code [former] § 17-17-201 et seq. [repealed], within ninety (90) days after the effective date of this act shall not be required to take an examination as provided in this chapter.

"(c) Any person who held a license pursuant to Arkansas Code, [former] § 17-17-201 et seq. [repealed], shall be entitled to a credit on the license fee required by this Act. The credit shall be a proportion of the fee paid under [former] § 17-17-205 [re-

pealed] or [former] § 17-17-207 [repealed] in the number of whole months remaining in the calendar year."

References to "this chapter" in other provisions of subchapters 1-3 may not apply to §§ 17-19-107 — 17-19-111, 17-19-212 and subchapter 4 which were enacted subsequently.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-17-101 et seq.

Effective Dates. Acts 1989, No. 417, § 8; Mar. 8, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present laws on the regulation of the bail bond business and bail generally are confusing and have been applied in an inconsistent manner; that there is an urgent need for the revision of laws pertaining to bail and that this Act is immediately necessary to eliminate deficiencies found in the present law. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-19-101. Definitions.
- 17-19-102. Penalties.
- 17-19-103. Civil and criminal proceedings.
- 17-19-104. Exemption.
- 17-19-105. Prohibitions.
- 17-19-106. Professional Bail Bond Company and Professional Bail Bondsman Licensing Board.

SECTION.

- 17-19-107. Exception to education requirements.
- 17-19-108. Rules and regulations.
- 17-19-109. Advertising by professional bail bond companies.
- 17-19-110. Licensed bail bond agent.
- 17-19-111. Fees.

Publisher's Notes. Former subchapter 1, concerning general provisions, was repealed by Acts 1989, No. 417, § 7. The former subchapter was derived from the following sources:

17-17-101. Acts 1971, No. 400, § 1; A.S.A. 1947, § 43-734.

17-17-102. Acts 1971, No. 400, § 14; A.S.A. 1947, § 43-747.

17-17-103. Acts 1971, No. 400, § 11; A.S.A. 1947, § 43-744.

17-17-104. Acts 1971, No. 400, § 10; A.S.A. 1947, § 43-743.

17-17-105. Acts 1971, No. 400, § 2; A.S.A. 1947, § 43-735.

17-17-106. Acts 1971, No. 400, § 12; A.S.A. 1947, § 43-745.

17-17-107. Acts 1971, No. 400, § 9; 1983, No. 811, § 4; A.S.A. 1947, § 43-742.

17-17-108. Acts 1971, No. 400, § 10; A.S.A. 1947, § 43-743.

Cross References. Bond or bond card in lieu of surrender of operator's or chauffeur's license, §§ 27-50-609, 27-50-610.

Effective Dates. Acts 1993, No. 901, § 52; Apr. 6, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present laws addressed in this omnibus Act on workers' compensation benefits and insurance licensure and other insurance regulatory issues are inadequate for the protection of the Arkansas public and immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this omnibus Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258; Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for

board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1248, § 43; July 1, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly that the distribution of general revenues and the creation of the various funds and fund accounts are essential to be in force at the beginning of the state fiscal year and that in the event that the General Assembly extends beyond the sixty day limit, the effective date of this act would not begin at that time creating confusion and not permitting the agencies to implement those programs as approved by the General Assembly. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety Section 33 of this act shall be in full force and effect from and after the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, Section 33 shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, Section 33 shall become effective on the date the last house overrides the veto. The remaining sections of this act shall become effective from and after July 1, 1997."

17-19-101. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Bail bond or appearance bond" means a bond for a specified monetary amount which is executed by the defendant and a qualified

licensee under this chapter and which is issued to a court, magistrate, or authorized officer as security for the subsequent court appearance of the defendant upon his or her release from actual custody pending the appearance;

(2) “Board” means the Professional Bail Bond Company and Professional Bail Bondsman Licensing Board;

(3) “Insurer” means any surety company which has qualified to transact surety business in this state;

(4) “Licensee” means a professional bail bond company or a professional bail bondsman;

(5) “Professional bail bond company” means an individual who is a resident of this state, an Arkansas firm, partnership, or corporation, or a foreign corporation registered and authorized to conduct business in the State of Arkansas that pledges a bail bond in connection with a judicial proceeding and receives or is promised therefor money or other things of value; and

(6) “Professional bail bondsman” means an individual who is a resident of this state and who acts through authority of a professional bail bond company in pledging a bail bond as security in a judicial proceeding.

History. Acts 1989, No. 417, § 1; 1995, No. 827, §§ 1, 3.

CASE NOTES

Cited: Van Curen v. Ark. Prof'l Bail Bondsman Licensing Bd., 79 Ark. App. 43, 84 S.W.3d 47 (2002); Mann v. Ark. Prof'l Bail Bondsman Licensing Bd., 88 Ark. App. 393, 199 S.W.3d 84 (2004).

17-19-102. Penalties.

(a) Any person who is found guilty of violating any of the provisions of this chapter shall upon conviction be guilty of a Class A misdemeanor.

(b) Any person who falsely represents to the Professional Bail Bond Company and Professional Bail Bondsman Licensing Board that any person has met the education or continuing education requirements of §§ 17-19-107, 17-19-212, and 17-19-401 et seq., shall be guilty of a Class B misdemeanor and upon conviction shall be punished accordingly.

History. Acts 1989, No. 417, § 1; 1993, No. 499, § 6; 2005, No. 1994, § 226.

A.C.R.C. Notes. References to “this chapter” in other provisions of subchapters 1-3 may not apply to §§ 17-19-102(b), 17-19-107 — 17-19-111, 17-19-212 or subchapter 4 which were enacted subse-

quently.

Amendments. The 2005 amendment substituted “guilty of a Class A misdemeanor” for “fined not more than one thousand dollars (\$1,000) for each offense or imprisoned for not more than one (1) year, or both” in (a).

17-19-103. Civil and criminal proceedings.

The venue for any criminal or civil proceeding filed for any violation of this chapter shall be in the county wherein the violation occurred.

History. Acts 1989, No. 417, § 1.

17-19-104. Exemption.

This chapter shall not affect the negotiation through a licensed broker or agent for, nor the execution or delivery of, an undertaking of bail executed by an insurer for its insured under a policy of automobile insurance or of liability insurance upon the automobile of the insured.

History. Acts 1989, No. 417, § 1.

17-19-105. Prohibitions.

No professional bail bondsman or professional bail bond company, nor court, nor law enforcement officer, nor any individual working on behalf of a professional bail bondsman or professional bail bond company, shall:

- (1) Require as a condition of his or her executing a bail bond that the principal agree to engage the services of a specified attorney;
- (2) Solicit business or advertise for business in or about any place where prisoners are confined or in or about any court;
- (3) Suggest or advise the engagement of any bail bond company or professional bail bondsman to underwrite a bail bond;
- (4) Enter a police station, jail, sheriff's office, or other place where persons in custody of the law are detained for the purpose of obtaining employment as a professional bail bondsman or professional bail bond company, without having been previously called by a person so detained or by some relative or other authorized person acting for or in behalf of the person so detained. Whenever such an entry occurs, the person in charge of the facility shall be given and promptly record the mission of the licensee and the name of the person calling the licensee and requesting him or her to come;
- (5) Pay a fee or rebate or give or promise anything of value to:
 - (A) A jailer, policeman, peace officer, committing magistrate, or any other person who has power to arrest or to hold in custody; or
 - (B) Any public official or public employee in order to secure a settlement, compromise, remission, or reduction of the amount of any bail bond or estreatment thereof;
- (6) Pay a fee or rebate or give anything of value to an attorney in bail bond matters, except in defense of any action on a bond;
- (7) Pay a fee or rebate or give or promise anything of value to the principal or anyone in his or her behalf;
- (8)(A) Participate in the capacity of an attorney at a trial or hearing of one on whose bond he or she is surety;
- (B) Attempt to obtain settlement or dismissal of a case;

(C) Give or attempt to give any legal advice to one on whose bond he or she is surety; or

(9) Accept anything of value from a principal except the premium, provided that the licensee shall be permitted to accept collateral security or other indemnity from the principal which shall be returned upon final termination of liability on the bond. The collateral security or other indemnity required by the licensee must be reasonable in relation to the amount of the bond.

History. Acts 1989, No. 417, § 1; 1997, No. 973, § 5.

CASE NOTES

Evidence.

Evidence was sufficient to establish a violation of this section based upon allegations that a friend of a licensed bail bondsman accompanied the bail bondsman to a county jail and distributed business cards of the bail bondsman to a trusty and others at the facility where (1) the bail bondsman left her friend with access to her business cards and cellular phone and gave instructions to obtain

certain information from the callers regarding their bonding needs, (2) the cards had the bail bondsman's cellular phone number on them, and (3) the bail bondsman left her friend outside the jail while she was inside preparing a bond. *Frawley v. Nickolich*, 73 Ark. App. 231, 41 S.W.3d 420 (2001).

Cited: Arkansas Prof'l Bail Bondsman Licensing Bd. v. Oudin, 348 Ark. 48, 69 S.W.3d 855 (2002).

17-19-106. Professional Bail Bond Company and Professional Bail Bondsman Licensing Board.

(a) This section may be cited as the "Arkansas Professional Bail Bond Company and Professional Bail Bondsman Licensing Act".

(b)(1) There is hereby created the Professional Bail Bond Company and Professional Bail Bondsman Licensing Board.

(2)(A) The board shall be composed of eight (8) members to be appointed by the Governor for terms of seven (7) years.

(B) Vacancies shall be filled by appointment of the Governor for the unexpired portion of the term.

(3)(A) Three (3) members of the board shall be licensed bail bond company owners, one (1) a municipal chief of police, one (1) a county sheriff, one (1) a municipal or circuit judge, and two (2) shall be residents of the state who are not a bail bond company owner, an elected judge, a sheriff, or a chief of police.

(B)(i) No two (2) of the three (3) bail bondsman members shall reside in the same congressional district.

(ii) At least one (1) board member shall be an African-American.

(iii) At least one (1) board member shall be a female.

(4) The board shall have the authority and responsibility to administer and enforce the provisions of this chapter relating to licensing and regulation of professional bail bond companies and professional bail bondsmen.

(5) The board shall have the authority to adopt and enforce such reasonable rules and regulations as it shall determine to be necessary to enable it to effectively and efficiently carry out its official duty of licensing and regulating professional bail bond companies and professional bail bondsmen.

(c) The members of the board shall receive expense reimbursement in accordance with § 25-16-901 et seq., and a stipend pursuant to § 25-16-904.

(d) The provisions of this section shall not be construed to repeal any laws in effect on August 13, 1993, relating to the licensing and regulation of professional bail bond companies and professional bail bondsmen but such laws shall remain in full force and effect and shall be administered by the board created herein.

History. Acts 1993, No. 500, §§ 1-5; 1995, No. 827, § 2; 1997, No. 250, § 126; 1999, No. 1286, § 2; 2001, No. 1817, § 1; 2009, No. 683, §§ 1, 2.

A.C.R.C. Notes. Former § 17-17-106, concerning the authority of the State Insurance Department, is deemed superseded by this section. The former section was derived from Acts 1989, No. 417, § 1.

As originally enacted by Acts 1993, No. 500, § 2, subdivision (b)(1)(A) also provided that the members first appointed to the board shall draw lots for terms so that one (1) member will serve for a term of one (1) year, one (1) for a term of two (2) years, one (1) for a term of three (3) years, one (1) for a term of (4) years, one (1) for a term of five (5) years, one (1) for a term of six (6) years and one (1) for a term of seven (7) years. Thereafter, all appointments shall be for terms of seven (7) years.

As originally enacted by Acts 1993, No. 500, § 4, subdivision (b)(3) read as follows: "The board shall have the authority to administer and enforce the provisions of this chapter, heretofore administered and enforced by the Commissioner of Insurance and the Insurance Department, relating to licensing and regulation of professional bail bond companies and professional bail bondsmen, ... and all such authority and responsibility with re-

spect to licensing and regulation of professional bail bond companies and professional bail bondsmen heretofore vested in and exercised by the Commissioner of Insurance and the Department of Insurance are hereby transferred to and vested in the Professional Bail Bond Company and Professional Bondsman Licensing Board."

As originally enacted by Acts 1993, No. 500, § 4, subdivision (b)(4) also provided that all administrative rules and regulations concerning professional bail bond companies and professional bail bondsmen adopted by the Commissioner of Insurance and in effect on August 13, 1993, shall continue in full force and effect until revised or repealed by the board.

Acts 2010, No. 76, § 4, provided: "FUND TRANSFER. The Professional Bail Bondsman Licensing Board, at the end of each fiscal year, shall transfer all but twenty-five percent (25%) of its fund balance to the General Revenue Fund Account in the State Treasury.

"The provisions of this section shall be in effect only from July 1, 2010 through June 30, 2011."

Amendments. The 2009 amendment substituted "eight (8)" for "seven (7)" in (b)(2)(A); substituted "two (2)" for "one (1)" in (b)(3)(A); and made related and minor stylistic changes.

CASE NOTES

Cited: Arkansas Prof'l Bail Bondsman Licensing Bd. v. Oudin, 348 Ark. 48, 69 S.W.3d 855 (2002); Van Curen v. Ark. Prof'l Bail Bondsman Licensing Bd., 79

Ark. App. 43, 84 S.W.3d 47 (2002); Mann v. Ark. Prof'l Bail Bondsman Licensing Bd., 88 Ark. App. 393, 199 S.W.3d 84 (2004).

17-19-107. Exception to education requirements.

Any licensed professional bail bondsman who is sixty-five (65) years of age or older and who has been licensed as a bail bondsman for fifteen (15) years or more shall be exempt from both the education and continuing education requirements of § 17-19-212 and § 17-19-401 et seq.

History. Acts 1993, No. 499, § 3.

A.C.R.C. Notes. References to “this chapter” in other provisions of subchapters 1-3 may not apply to §§ 17-19-102(b),

17-19-107 — 17-19-111, 17-19-212 or subchapter 4 which were enacted subsequently.

17-19-108. Rules and regulations.

The Professional Bail Bond Company and Professional Bail Bondsman Licensing Board shall adopt such reasonable rules and regulations as it shall deem necessary to assure the effective and efficient administration of §§ 17-19-107 and 17-19-212 and § 17-19-401 et seq.

History. Acts 1993, No. 499, § 7.

A.C.R.C. Notes. References to “this chapter” in other provisions of subchapters 1-3 may not apply to §§ 17-19-102(b),

17-19-107 — 17-19-111, 17-19-212 or subchapter 4 which were enacted subsequently.

17-19-109. Advertising by professional bail bond companies.

(a) All business cards, signs, telephone ads, newspaper ads, or any other type of advertising by professional bail bond companies shall display the company name prominently to assure that the identity of the company doing the advertising is readily apparent.

(b) Any such advertising by or on behalf of individual professional bail bondsmen shall prominently display the name of the bail bond company and shall contain no information or other indication that the bail bondsman is independent of the company.

History. Acts 1993, No. 400, § 1.

A.C.R.C. Notes. References to “this chapter” in other provisions of subchapters 1-3 may not apply to §§ 17-19-102(b),

17-19-107 — 17-19-111, 17-19-212 or subchapter 4 which were enacted subsequently.

17-19-110. Licensed bail bond agent.

(a) A licensed bail bond agent shall be permitted to write a bail bond in any county with a current copy of his or her license if:

(1) The agent has a current license with a current licensed professional bail bond company; and

(2) The agent and the agent's company are in good standing with the courts in the jurisdiction where the bond is to be posted.

(b) A licensed bail bond agent shall carry a current copy of his or her company's license, his or her bail bond agent license, and a current copy of his or her qualifying power of attorney that is on file with the

Professional Bail Bond Company and Professional Bail Bondsman Licensing Board.

(c)(1) Only one (1) power of attorney per bond not exceeding the agent's qualifying power of attorney shall be permitted unless a court has separated the charges and amounts of bonds.

(2) Powers of attorney shall not be stacked.

History. Acts 1993, No. 402, § 1; 1999, No. 567, § 2; 2003, No. 1648, § 3.

A.C.R.C. Notes. References to "this chapter" in other provisions of subchap-

ters 1-3 may not apply to §§ 17-19-102(b), 17-19-107 — 17-19-111, 17-19-212 or subchapter 4 which were enacted subsequently.

17-19-111. Fees.

(a) Notwithstanding any other provisions of this chapter to the contrary, and notwithstanding any other provisions of Arkansas law to the contrary, professional bail bond companies are hereby required to charge, collect, and remit the following fees for direct deposit as special revenues into the State Insurance Department Trust Fund for the support, personnel, maintenance, and operations of the State Insurance Department and for the Domestic Peace Fund administered by the Arkansas Child Abuse/Rape/Domestic Violence Commission, in addition to any other fees, taxes, premium taxes, levies, or other assessments imposed in connection with the issuance of bail bonds by professional bail bond companies under Arkansas law.

(b)(1) In addition to the bail or appearance bond premium or compensation allowed under § 17-19-301, each licensed professional bail bond company shall charge and collect as a nonrefundable fee for the fund an additional ten-dollar fee per bail bond for giving bond for each and every bail and appearance bond issued by the licensed professional bail bond company by or through its individual licensees.

(2) The fees shall be collected quarterly and then reported and filed with the Insurance Commissioner no later than fifteen (15) calendar days after the end of each quarter.

(3) The notarized quarterly reporting form and a notarized annual reconciliation form as to all fees collected for the fund shall be filed by each professional bail bond company on forms prescribed by the commissioner and at the times and in the manner as the commissioner shall prescribe in conformity with this section.

(4) A paper-processing charge of fifteen dollars (\$15.00) shall be collected on each bail bond in order to defray the surety's costs incurred by the quarterly and annual reporting requirements contained herein and to further defray the surety's costs incurred in the collection of all fees due, owing, and collected on behalf of the fund and the surety's costs incurred in the preparation of all required reports submitted in conformance with the standards established by the American Institute of Certified Public Accountants.

(c)(1) The commissioner may, in his or her discretion, grant an extension for the filing of the report and fees for good cause shown upon timely written request.

(2) Absent an extension for good cause shown, each licensed professional bail bond company failing to report or pay these fees shall be liable to the fund for a monetary penalty of one hundred dollars (\$100) per day for each day of delinquency.

(3) The commissioner may pursue any appropriate legal remedies on behalf of the fund to collect any delinquent fees and penalties owed as special revenues.

(d)(1) Upon collection of the fees and any monetary penalties, the commissioner shall deposit as special revenues:

(A) Sufficient fees and penalties directly into the State Insurance Department Trust Fund to provide for the personal services and operating expenses of the Professional Bail Bond Company and Professional Bail Bondsman Licensing Board under subsection (g) of this section; and

(B) The remainder of all fees and penalties directly into the Domestic Peace Fund administered by the Arkansas Child Abuse/Rape/Domestic Violence Commission.

(2) The fees and penalties shall be in addition to all other fees, licensure or registration fees, taxes, assessments, levies, or penalties payable to any federal or state office, court, agency, board, or commission or other public official or officer of the state, or its political subdivisions, including counties, cities, or municipalities, by professional bail bond companies.

(3)(A) Each individual bail bondsman is required to assist in collection of the fees but is exempt from the duty and responsibility of payment of the fees to the fund unless he or she misappropriates or converts such moneys to his or her own use or to the use of others not entitled to the fees.

(B) In that case, the commissioner shall proceed on behalf of the fund with any civil or criminal remedies at his or her disposal against the individual responsible.

(C) Upon criminal conviction of the individual responsible for fraudulent conversion of the moneys due the fund, the individual responsible shall pay restitution to the trust fund, and the court shall incorporate a finding to that effect in its order.

(D) Absent substantial evidence to the contrary, the violations of the individual may be attributed to the employing bail bond company, and any criminal or civil court may, in its discretion and upon substantial evidence, order the employing bail bond company to pay restitution to the fund on behalf of the responsible individual and shall incorporate that finding into its order.

(e) For purposes of any statutory security deposit Arkansas law requires of professional bail bond companies, including, but not limited to, the deposit under § 17-19-205, the payment of the fees required by this section is considered to be a duty of the licensee, so as to allow the commissioner on behalf of the fund to make a claim against any such deposit for the fees required by this section and any penalties owed thereon, up to the limit of any security deposit.

(f) Under no circumstances shall the fees or penalties thereon held in or for deposit into the fund as special revenues be subject to any tax, levy, or assessment of any kind, including, but not limited to, any bond forfeiture claims, any garnishment or general creditors' claims, any remedies under Title 16 of this Code, or other provisions of Arkansas law.

(g)(1) At the beginning of each fiscal year, the department shall certify to the Chief Fiscal Officer of the State an amount sufficient to provide for personal services and operating expenses of the Professional Bail Bond Company and Professional Bail Bondsman Licensing Board.

(2) The Chief Fiscal Officer of the State shall then transfer the certified amount from the State Insurance Department Trust Fund to the Bail Bondsman Board Fund.

History. Acts 1993, No. 901, § 31; 1997, No. 1096, § 1; 1997, No. 1248, § 39; 2007, No. 730, § 1.

A.C.R.C. Notes. As enacted, subdivision (b)(1) of this section began: "Commencing on May 1, 1993, and."

Amendments. The 2007 amendment

inserted "and for the Domestic Peace Fund administered by the Arkansas Child Abuse/Rape/Domestic Violence Commission" in (a); and rewrote (d)(1).

Cross References. The Bail Bondsman Board Fund, § 19-5-1088.

SUBCHAPTER 2 — LICENSING

SECTION.

- 17-19-201. Licenses required.
- 17-19-202. Applications.
- 17-19-203. Character references.
- 17-19-204. Examination.
- 17-19-205. Letter of credit or certificate of deposit required.
- 17-19-206. Duties of board and clerks.

SECTION.

- 17-19-207. Expiration and renewal.
- 17-19-208. Civil action — Administrative action.
- 17-19-209. Violations — Hearings.
- 17-19-210. Suspension — Review.
- 17-19-211. Administrative penalty.
- 17-19-212. Licenses.

Publisher's Notes. Former subchapter 2, concerning licensing, was repealed by Acts 1989, No. 417, § 7. The former subchapter was derived from the following sources:

17-17-201. Acts 1971, No. 400, §§ 3, 13; A.S.A. 1947, §§ 43-736, 43-746.

17-17-202. Acts 1971, No. 400, §§ 4, 5; 1983, No. 811, §§ 1, 2; A.S.A. 1947, §§ 43-737, 43-738.

17-17-203. Acts 1971, No. 400, § 4; 1983, No. 811, § 1; A.S.A. 1947, § 43-737.

17-17-204. Acts 1971, No. 400, § 4; 1983, No. 811, § 1; A.S.A. 1947, § 43-737.

17-17-205. Acts 1971, No. 400, §§ 4, 5; 1983, No. 811, §§ 1, 2; A.S.A. 1947, §§ 43-737, 43-738.

17-17-206. Acts 1971, No. 400, §§ 4, 6; 1983, No. 811, § 1; A.S.A. 1947, §§ 43-737, 43-739.

17-17-207. Acts 1971, No. 400, § 8; 1973, No. 55, § 2; 1983, No. 811, § 3; A.S.A. 1947, § 43-741.

17-17-208. Acts 1971, No. 400, § 7; 1973, No. 55, § 1; A.S.A. 1947, § 43-740.

Effective Dates. Acts 2003, No. 1174, § 2: Apr. 8, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that an appeal from an order by the Professional Bail Bond Company and Professional Bail Bondsman Licensing Board to the County Circuit of Pulaski County operates as a stay which may cause an injustice to occur; that the stay shouldn't be automatic, but rather after a hearing. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become

effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”
Acts 2005, No. 1960, § 2: July 1, 2005.
Emergency clause provided: “It is found

and determined by the General Assembly of the State of Arkansas that the liability of bail bond companies has increased dramatically; and that this act is necessary to ensure that bail bond companies are able to perform their duties. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2005.”

17-19-201. Licenses required.

- (a) No person shall engage in bail bond business without first having been licensed as provided in this chapter.
- (b) A professional bail bondsman shall not execute or issue an appearance bond in this state without holding a valid appointment from a professional bail bond company and without attaching to the appearance bond an executed and numbered power of attorney referencing the professional bail bond company.
- (c) An insurer shall not execute an undertaking of bail without being licensed as a professional bail bond company.
- (d) A professional bail bond company shall not engage in the bail bond business:
 - (1) Without having been licensed as a professional bail bond company under this chapter; and
 - (2) Except through an agent licensed as a professional bail bondsman under this chapter.
- (e) A professional bail bond company shall not permit any unlicensed person to solicit or engage in the bail bond business in the company’s behalf, except for individuals who are employed solely for the performance of clerical, stenographic, investigative, or other administrative duties which do not require a license under this chapter and whose compensation is not related to or contingent upon the number of bonds written.

History. Acts 1989, No. 417, § 1.

CASE NOTES

ANALYSIS

Discretion.
Licensing.

Discretion.

The acceptance or rejection of a bondsman is a discretionary act, and mandamus will not lie to compel its performance.

United Bonding Co. ex rel. Richmond v. Johnson, 293 Ark. 467, 739 S.W.2d 147 (1987) (decision under prior law).

Licensing.

Passage of the general licensing act regulating the bail bond business does not remove the power of a court to reject a bond made by a licensed surety. United

Bonding Co. ex rel. Richmond v. Johnson, 293 Ark. 467, 739 S.W.2d 147 (1987) (decision under prior law).

Cited: Bob Cole Bail Bonds, Inc. v. Howard, 307 Ark. 242, 819 S.W.2d 274 (1991).

17-19-202. Applications.

(a) Every applicant for a professional bail bondsman license or a professional bail bond company license shall apply on forms furnished by the Professional Bail Bond Company and Professional Bail Bondsman Licensing Board.

(b) The application of a professional bail bondsman shall be accompanied by a duly executed power of attorney issued by the professional bail bond company for whom the professional bail bondsman will be acting.

(c)(1) An application for a professional bail bond company license shall be accompanied by proof that the applicant:

(A) Is an Arkansas partnership, firm, or corporation, a foreign corporation registered and authorized to conduct business in the State of Arkansas, or an individual who is a resident of the state; and

(B) Has at least one (1) owner or partner that has been licensed for at least two (2) years during the last three (3) years by the State of Arkansas as a professional bail bondsman.

(2) A corporation shall file proof that its most recent annual franchise tax has been paid to the Secretary of State.

(d)(1)(A) At the time of application for every professional bail bond company license, there shall be paid to the board:

(i) For a new company license, a fee of two thousand five hundred dollars (\$2,500); or

(ii) For a renewal of a company license, a fee of one thousand dollars (\$1,000).

(B) Each professional bail bond company license or renewal for a sole proprietor, partnership, or corporation shall include one (1) license for one (1) agent per company per year.

(2) Each applicant for a professional bail bondsman license shall pay the board a license fee of one hundred dollars (\$100) at the time of application, except that if the applicant is also an applicant as an individual for a professional bail bond company license, then the applicant shall not be required to pay a license fee for licensure as a professional bail bondsman but shall comply with all other requirements for licensure as a professional bail bondsman.

(3) License fees shall be payable in full on a yearly basis regardless of the date of issuance.

(4) Any agent who transfers his or her license from one professional bail bond company to another shall:

(A) Pay to the board a transfer fee of two hundred fifty dollars (\$250); and

(B) File with the board:

(i) A sworn affidavit stating that all premiums, fees, and powers of attorney owed to or issued by the professional bail bond company

from which he or she is transferring his or her license have been delivered to the company;

(ii) A letter of resignation addressed to the professional bail bond company from which he or she is transferring or a letter of termination addressed to him or her from the professional bail bond company terminating his or her appointment;

(iii) A completed agent application on forms prescribed by the board;

(iv) A completed company statement from the company to which he or she desires to transfer his or her license; and

(v) An original qualifying power of attorney issued by the company to which he or she desires to transfer his or her license.

(5)(A) Upon receipt of a request for transfer of a bail bondsman license, the applicable transfer fee, and the documents specified in subdivision (d)(4) of this section, the board shall forward copies of the letter of resignation, if applicable, and the sworn affidavit of the agent to the professional bail bond company from which the agent desires to transfer his or her license.

(B) Upon receipt of the letter of resignation, if applicable, and the sworn affidavit of the licensee, the professional bail bond company from which the agent is transferring shall have seven (7) business days to contest the agent's sworn statement.

(C) A professional bail bond company contesting an agent's sworn statement shall file a written complaint on forms furnished by the board setting out in detail the property that the company denies the agent has returned as attested by the sworn affidavit.

(D) Any documents supporting the complaint contesting the sworn affidavit and which shall be offered as evidence to prove the complaint shall be filed with the complaint.

(E) Upon receipt of the complaint, the Executive Director of the Professional Bail Bond Company and Professional Bail Bondsman Licensing Board shall set the matter for informal hearing to be held within seven (7) days of receipt of the complaint and advise the professional bail bond company and the agent by certified mail, return receipt requested, of the date, time, and location of the informal hearing.

(F) Either party may appeal the decision of the executive director to a formal hearing before the board by filing with the board a notice of appeal within seven (7) days of receipt of the decision by the executive director.

(G)(i) No transfer of an agent's license shall be effective prior to the expiration of the seven-day period for contesting the transfer request unless the professional bail bond company from which the agent is requesting a transfer shall notify the board that it has no objection to the transfer, in which case the transfer may be entered prior to expiration of the seven-day period.

(ii) If no complaint contesting the agent's sworn affidavit is received during the seven-day contest period, the license shall be transferred as requested.

(iii) A professional bail bond company that does not contest the sworn affidavit of a transferring agent is not precluded by the failure to contest the sworn affidavit from filing a complaint that alleges a violation of the applicable statutes, rules, or regulations by the transferring agent upon discovery of the alleged violation by the professional bail bond company.

(H)(i) If the allegations of a complaint contesting the transfer are found by the board to have been established, no transfer of the license shall be accomplished until the agent accounts for, returns, or pays to the professional bail bond company contesting the transfer the property or money issued to or held in a fiduciary capacity by the agent.

(ii) If a complaint is filed contesting the sworn affidavit of the transferring agent, a specific finding of fact shall be made by the board concerning whether the affidavit or complaint contesting the affidavit was filed in good faith by the respective parties.

(iii) In the case of a finding of a lack of good faith, the party to whom the finding applies shall be subject to sanctions or disciplinary action pursuant to the provisions of § 17-19-210 and as provided by applicable rules.

History. Acts 1989, No. 417, § 1; 1995, No. 827, § 4; 1999, No. 567, § 1; 2001, No. 1680, § 1; 2005, No. 858, § 1; 2005, No. 1960, § 1.

Amendments. The 2005 amendment by No. 858, in (d)(4), substituted "agent who" for "agent that", inserted the subdivi-

vision (A) designation and made related changes; and added (d)(4)(B) and (d)(5).

The 2005 amendment by No. 1960 inserted the subdivision (A) designation in (c)(1) and made related changes; and added (c)(1)(B).

17-19-203. Character references.

Each applicant for a professional bail bondsman license shall:

(1) File with the Professional Bail Bond Company and Professional Bail Bondsman Licensing Board written statements from at least three (3) persons who know his or her character;

(2)(A) Be required to apply to the Identification Bureau of the Department of Arkansas State Police for a state and nationwide criminal records check to be conducted by the Federal Bureau of Investigation.

(B) The criminal records check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(C) The applicant shall sign a release of information to the board and shall be responsible to the Department of Arkansas State Police for the payment of any fee associated with the criminal records check.

(D) Upon completion of the criminal records check, the Identification Bureau of the Department of Arkansas State Police shall forward all information obtained concerning the applicant to the board.

(E) At the conclusion of the criminal background check required by this subdivision (2), the Identification Bureau of the Department of

Arkansas State Police shall promptly destroy the fingerprint card of the applicant; and

(3) Such other proof as the board may require that he or she is competent, trustworthy, financially responsible, and of good personal and business reputation and has not been convicted of a felony or any offense involving moral turpitude.

History. Acts 1989, No. 417, § 1; 1995, No. 827, § 4; 1999, No. 1346, § 1.

17-19-204. Examination.

(a) In order to determine the competence of each applicant for a professional bail bondsman license, the Professional Bail Bond Company and Professional Bail Bondsman Licensing Board shall require every individual to submit to, and to pass to the satisfaction of the board, a written examination to be prepared by the board and appropriate to the transaction of bail bond business.

(b) Such an examination shall be held in a location and at such times as the board shall determine.

(c) Every individual applying to take a written examination shall, at the time of applying therefor, pay to the board a nonrefundable examination fee of twenty-five dollars (\$25.00).

(d) If the application is approved, and if the nonrefundable examination fee is paid, an examination permit will be issued to the applicant. The permit will be valid for a period of ninety (90) days from the date of issuance. If the applicant does not schedule and appear for examination within that ninety-day period, the permit shall expire and the applicant may be required to file a new application, and shall pay another nonrefundable examination fee of twenty-five dollars (\$25.00) before issuance of another examination permit to the applicant.

(e) If the applicant appears for examination but fails to pass the examination, the applicant may apply for reexamination. The reexamination fee shall be a nonrefundable fee of fifteen dollars (\$15.00). The board may require a waiting period of eight (8) weeks before reexamination of an applicant who twice failed to pass previous similar examinations.

History. Acts 1989, No. 417, § 1; 1995, No. 827, § 4.

17-19-205. Letter of credit or certificate of deposit required.

(a)(1) An applicant for a professional bail bond company license shall file with the Professional Bail Bond Company and Professional Bail Bondsman Licensing Board an irrevocable letter of credit from an Arkansas chartered bank or a federally chartered bank in Arkansas or a certificate of deposit.

(2)(A) The letter of credit or certificate of deposit shall be approved by the board as to form and sufficiency and shall be conditioned upon faithful performance of the duties of the licensee.

(B) The minimum amount for a professional bail bond company initially licensed on or before July 1, 1989, shall be twenty-five thousand dollars (\$25,000).

(C) The minimum amount for a professional bail bond company initially licensed after July 1, 1989, shall be one hundred thousand dollars (\$100,000).

(D) The minimum amount for a professional bail bond company initially licensed on or after July 1, 2009, shall be two hundred fifty thousand dollars (\$250,000).

(E) Professional bail bond companies and professional bail bondsmen who were licensed under Act 400 of 1971 [repealed] before March 8, 1989, shall be required only to file or have on file with the board a letter of credit or certificate of deposit approved by the board as to form and sufficiency, in a minimum amount of five thousand dollars (\$5,000), conditioned upon the faithful performance of the duties of the licensee, provided they do not exceed the maximum amount of unsecured bond commitments as provided in § 17-19-304.

(b) A letter of credit or certificate of deposit shall not be subject to termination or cancellation by either party in less than sixty (60) days after the giving of written notice thereof to the other parties and to the board.

(c) A termination or cancellation shall not affect the liability of the surety or sureties on a bond incurred before the effective date of termination or cancellation.

History. Acts 1989, No. 417, § 1; 1995, No. 827, § 4; 2009, No. 147, § 1.

inserted (a)(2)(D) and redesignated the remaining subsections accordingly; and made minor stylistic changes.

Amendments. The 2009 amendment

CASE NOTES

Cited: Muldrow v. Douglass, 316 Ark. 86, 870 S.W.2d 736 (1994); Holt Bonding Co. v. Nichols, 988 F. Supp. 1232 (W.D. Ark. 1997).

17-19-206. Duties of board and clerks.

(a) Before issuance of a license under the provisions of this chapter, every applicant for a license shall satisfy the Professional Bail Bond Company and Professional Bail Bondsman Licensing Board as to Arkansas residency, trustworthiness, and competence, as applicable, and shall otherwise comply with the conditions and qualifications set forth in this chapter.

(b)(1) The board may refuse to issue any license to an applicant who fails to comply with the provisions of this chapter or rule or regulation of the board.

(2) The board may refuse to issue any such license to any applicant that has made a material misrepresentation in the application for such a license.

(c) Upon the approval and issuance of any license provided for under this chapter, the board shall give written notice to the sheriff and circuit clerk of each county in the state.

(d) Upon revocation or suspension of license, the board shall give written notice to that effect to the sheriff and circuit clerk in each county in the state.

(e) The board shall maintain a complete record of registrations, revocations, and suspensions, and the record shall be available to the sheriff and county clerk of each county of the state.

(f) Annually, the board shall furnish the sheriffs and circuit clerks with a list of renewal licenses.

History. Acts 1989, No. 417, § 1; 1995, No. 827, § 4; 2007, No. 674, § 1.

Amendments. The 2007 amendment, in (e), substituted “board” for “sheriff and

circuit clerk in each county,” added “and the record shall be available to the sheriff and county clerk of each county of the state,” and made a related change.

CASE NOTES

Cited: Bob Cole Bail Bonds, Inc. v. Howard, 307 Ark. 242, 819 S.W.2d 274 (1991).

17-19-207. Expiration and renewal.

(a) Every license issued pursuant to this chapter shall be for a term expiring on December 31 following the date of its issuance, and it may be renewed for the ensuing calendar year upon the filing of a renewal application.

(b) The Professional Bail Bond Company and Professional Bail Bondsman Licensing Board may refuse to renew a license for any cause for which issuance of the original license could have been refused or for the licensee’s violation of any of the provisions of this chapter or the rules and regulations of the board.

(c) Every licensee shall be required to file a renewal application, the form and subject matter of which shall be prescribed by the board.

(d)(1) At the time of application for renewal of a professional bail bond company license, there shall be paid to the board for the company’s renewal license a fee of one thousand dollars (\$1,000).

(2) Each professional bail bondsman shall pay a fee of one hundred dollars (\$100) for renewal of the license, except that if the applicant for renewal also holds a professional bail bond company license, then the applicant shall not be required to pay a renewal fee for a professional bail bondsman license.

History. Acts 1989, No. 417, § 1; 1995, No. 827, § 4.

17-19-208. Civil action — Administrative action.

(a)(1) If during the term of the letter of credit or certificate of deposit any licensee shall be guilty of misconduct or malfeasance in his or her dealings with any court or magistrate or officer or with any person or company in connection with any deposit or bail bond, the Professional Bail Bond Company and Professional Bail Bondsman Licensing Board may maintain a civil action on the letter of credit or certificate of deposit, or may maintain an administrative action on any certificate of deposit. The board may recover for the use and benefit of the person or persons aggrieved a maximum amount of ten thousand dollars (\$10,000). The provisions of this subdivision (a)(1) shall be in addition to all other remedies available to the aggrieved person and nothing in this subdivision (a)(1) shall be construed as limiting the liability of a professional bail bond company or a professional bail bondsman.

(2) The board may suspend the license of such a licensee until such time as the board recovers the full amount allowable or recovers for the benefit of the persons aggrieved the amount of loss or injury sustained pursuant to subdivision (a)(1) of this section, and until such time as the licensee has filed with the board an additional letter of credit or certificate of deposit in the required amount. The board shall promptly notify the licensee as provided in subdivision (b)(2) of this section.

(b)(1) When a final civil judgment for court-ordered bond forfeitures is entered as to a bail bond issued by the licensee by a court of competent jurisdiction in this state and the judgment is not paid within ninety (90) days thereafter, the court may send a copy of the judgment, duly certified by the clerk of the court, and proof of service of the judgment on the licensee in accordance with Rule 5 of the Arkansas Rules of Civil Procedure to the board, and then the board may promptly make a claim on the surety for payment of the allowable amount of the licensee's letters of credit on behalf of the court or shall withdraw the allowable amount of the licensee's certificates of deposit and shall transmit to the clerk of the court so much of the securities as are allowable. The board shall honor the judgments from the respective courts up to the limits set out in subdivision (a)(1) of this section.

(2) Upon receipt of the judgment and proof of notice of service on the licensee, the board may suspend the license of the licensee until such time as the judgment is paid or otherwise satisfied and until such time as the licensee has filed with the board another letter of credit or certificate of deposit in the required amount. The board shall promptly notify the licensee in writing by certified mail of the claims upon the licensee's letter of credit or certificates of deposit and shall also include a copy of the board's order of suspension.

(3) If the allowable amount of the letter of credit or certificate of deposit filed with the board is not sufficient to pay or otherwise satisfy the judgments as to bail bonds issued by the professional bail bond company in § 17-19-205(a), the board may promptly make a claim against the professional bail bond company on behalf of the court.

(c) In the event a professional bail bond company fails to file with the board the additional letter of credit or certificate of deposit to maintain the license within ninety (90) days from the effective date of the board's order of suspension as provided in subdivisions (a)(2), (b)(2), or (b)(3) of this section, the board shall cancel the license of the licensee and shall promptly notify the licensee as provided in subdivision (b)(2) of this section.

(d) Upon the nonrenewal, cancellation, or revocation of any license hereunder, the board will release to the licensee the qualifying bonds or certificates of deposit filed with the board only upon receipt of written documentation from all the courts in all the counties in which the licensee engaged in business that all bonds issued by the licensee have been exonerated, and that no unpaid bond forfeitures remain outstanding, and that all civil judgments as to forfeitures on bonds issued by the licensee have been paid in full.

(e) If a company license has been revoked because of unpaid judgments, during the appeals process the company shall file a supersedeas bond in the amount of the unpaid judgments with the court in which the appeal is taken.

History. Acts 1989, No. 417, § 1; 1995, No. 827, § 4; 2001, No. 1679, § 1; 2009, No. 633, § 18.

Amendments. The 2009 amendment, in (b)(1), substituted "Rule 5 of the Arkan-

sas Rules of Civil Procedure" for "present laws governing service of process on defendants in other civil actions" and made related and minor stylistic changes.

17-19-209. Violations — Hearings.

(a) The Professional Bail Bond Company and Professional Bail Bondsman Licensing Board shall investigate any alleged violation of this chapter.

(b) Any person may file a complaint stating facts constituting an alleged violation of this chapter. The complaint shall be signed under penalty of perjury.

(c) All hearings held under this chapter shall be conducted in the same manner as hearings held by the board under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., unless otherwise stated in this chapter.

(d)(1) With respect to the subject of any examination, investigation, or hearing being conducted by the board, the board may subpoena witnesses and administer oaths and affirmations, and examine any individual under oath, and may require and compel the production of records, books, papers, contracts, and other documents.

(2) Subpoenas of witnesses shall be served in the same manner as if issued by a circuit court and may be served by certified mail.

(3) If any individual fails to obey a subpoena issued and served pursuant to this section with respect to any matter concerning which he or she may be lawfully interrogated, upon application of the board, the Pulaski County Circuit Court may issue an order requiring the individual to comply with the subpoena and to testify.

(4) Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(5) Any person willfully testifying falsely under oath to any matter material to any examination, investigation, or hearing shall upon conviction be guilty of perjury and punished accordingly.

(e) Not less than ten (10) days in advance, the board shall give notice of the time and place of the hearing, stating the matters to be considered at the hearing.

(f) The board shall allow any party to the hearing to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary evidence and to examine witnesses, to present evidence in support of his or her interest, and to have subpoenas issued by the board to compel attendance of witnesses and production of evidence in his or her behalf.

(g)(1) A party may appeal from any order of the board as a matter of right and shall be taken to the Pulaski County Circuit Court by filing written notice of appeal to the court and by filing a copy of the notice with the board.

(2) Within thirty (30) days after filing the copy of a notice of appeal with the board, the board shall make, certify, and deposit in the office of the clerk of the court in which the appeal is pending a full and complete transcript of all proceedings had before the board and all evidence before the board in the matter, including all of the board's files therein.

History. Acts 1989, No. 417, § 1; 1995, No. 827, § 4; 1997, No. 973, § 6; 1999, No. 1477, § 1; 2003, No. 1174, § 1.

CASE NOTES

ANALYSIS

Constitutionality.
Improper Action.

Constitutionality.

Former subsection (g)(4), which provided for de novo review, violated the separation of powers doctrine and, therefore, was unconstitutional. *Tomerlin v. Nickolich*, 342 Ark. 325, 27 S.W.3d 746 (2000).

Improper Action.

Sheriff who was concerned about a bonding company's failure to forfeit a bond should have filed a complaint alleging such violation and the board would have conducted a hearing; the sheriff's unilateral decision to instead accept no further bonds was improper. *Holt Bonding Co. v. Nichols*, 988 F. Supp. 1232 (W.D. Ark. 1997).

17-19-210. Suspension — Review.

(a) The Professional Bail Bond Company and Professional Bail Bondsman Licensing Board may suspend for up to twelve (12) months or revoke or refuse to continue any license issued pursuant to the provisions of this chapter if after notice and hearing, the board determines that the licensee or any member of a company which is so licensed has:

(1) Violated any provision of, or any obligation imposed by, this chapter or any lawful rule, regulation, or order of the board or has been convicted of a felony or any offense involving moral turpitude;

(2) Made a material misstatement in the application for license, in the application for renewal license, or in the financial statement which accompanies the application or renewal application for license as a professional bail bond company;

(3) Committed any fraudulent or dishonest acts or practices or demonstrated his or her incompetency or untrustworthiness to act as such a licensee;

(4) Charged or received, as premium or compensation for the making of any deposit or bail bond, any sum in excess of that permitted by law;

(5) Required as a condition of his or her executing a bail bond that the principal agree to engage the services of a specified attorney;

(6) Signed, executed, or issued bonds with endorsements in blank, or prepared or issued fraudulent or forged bonds or power of attorney;

(7) Failed in the applicable regular course of business to account for and to pay premiums held by the licensee in a fiduciary capacity to the professional bail bond company or other person entitled thereto; or

(8) Failed to comply with the provisions of the laws of this state, or rule, regulation, or order of the board for which issuance of the license could have been refused had it then existed and been known to the board.

(b) The acts or conduct of any professional bail bondsman who acts within the scope of the authority delegated to him or her shall also be deemed the act or conduct of the professional bail bond company for which the professional bail bondsman is acting as agent.

(c) If the board finds that one (1) or more grounds exist for the suspension or revocation of any license, the board may in its discretion request that formal charges be filed against the violator and that penalties set out in § 17-19-102 be imposed.

(d) If the board finds that one (1) or more grounds exist for the suspension or revocation of a license and that the license has been suspended within the previous twenty-four (24) months, then the board shall revoke the license.

(e) The board may not again issue a license under this chapter to any person or entity whose license has been revoked.

(f) If the board determines that the public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, a summary suspension of a license issued pursuant to this chapter may be ordered pending an administrative hearing before the board, which shall be promptly instituted.

(g) If a professional bail bond company license is so suspended or revoked, no member of the company or officer or director of the corporation shall be licensed or be designated in any license to exercise the powers thereof during the period of the suspension or revocation, unless the board determines upon substantial evidence that the member, officer, or director was not personally at fault and did not acquiesce in the matter on account of which the license was suspended or revoked.

(h) The action of the board in issuing or refusing to issue or in suspending or revoking any license shall be subject to review by the Pulaski County Circuit Court upon filing of an action therefor within thirty (30) days after the issuance of written notice by the board of the action taken.

History. Acts 1989, No. 417, § 1; 1995, No. 827, § 4.

CASE NOTES

ANALYSIS

Revocation of License.
Suspension.

Revocation of License.

The Board's decision to revoke appellant's bondsman's license was supported by substantial evidence where undisputed facts proved that appellant refused to refund a \$3,115 premium when he learned the arrestee would not be released because of an INS hold. *Van Curen v. Ark. Prof'l Bail Bondsman Licensing Bd.*, 79 Ark. App. 43, 84 S.W.3d 47 (2002).

Suspension.

License cannot be suspended by the trial court. *United Bonding Co. ex rel. Richmond v. Johnson*, 293 Ark. 467, 739 S.W.2d 147 (1987) (decision under prior law).

Sheriff's refusal to accept bonds from a

particular bonding company amounted to a suspension of the bonding company's authority to issue bonds, which was equivalent to an impermissible suspension of the company's license. *Holt Bonding Co. v. Nichols*, 988 F. Supp. 1232 (W.D. Ark. 1997).

Trial court did not err in finding that bondsman had violated subdivision (a)(3) of this section by telling a client of another bondsman that she had the legal right to cancel her bond with the other company and in modifying the licensing board's revocation of the bondsman's license to a one year suspension because the board did not appeal from the trial court's decision. *Mann v. Ark. Prof'l Bail Bondsman Licensing Bd.*, 88 Ark. App. 393, 199 S.W.3d 84 (2004).

Cited: *Arkansas Prof'l Bail Bondsman Licensing Bd. v. Oudin*, 348 Ark. 48, 69 S.W.3d 855 (2002).

17-19-211. Administrative penalty.

If the Professional Bail Bond Company and Professional Bail Bondsman Licensing Board finds that one (1) or more grounds exist for the suspension or revocation of any license, the board in its discretion, and in lieu of suspension or revocation, may impose upon the licensee an administrative penalty in an amount not to exceed five thousand dollars (\$5,000).

History. Acts 1989, No. 417, § 1; 1995, No. 827, § 5; 1997, No. 973, § 7.

CASE NOTES

Cited: *Arkansas Prof'l Bail Bondsman Licensing Bd. v. Oudin*, 348 Ark. 48, 69 S.W.3d 855 (2002).

17-19-212. Licenses.

Each applicant for an initial bail bondsman license who satisfactorily completes the examination and meets the other qualifications and requirements prescribed by law, including the completion of a minimum of eight (8) hours of education in subjects pertaining to the authority and responsibilities of a bail bondsman and a review of the laws and regulations relating thereto, shall be licensed by the Professional Bail Bond Company and Professional Bail Bondsman Licensing Board.

History. Acts 1993, No. 499, § 1; 1997, No. 973, § 8; 1999, No. 567, § 3.

A.C.R.C. Notes. References to "this chapter" in other provisions of subchapters 1-3 may not apply to this section, §§ 17-19-102(b), 17-19-107 — 17-19-111 or subchapter 4 which were enacted subsequently.

Acts 1993, No. 499, § 3, effective Au-

gust 13, 1993, provided, in part: "A person licensed as a professional bail bondsman prior to the effective date of this act shall not be required to meet the educational requirement in order to obtain a license but shall be required to meet the minimum continuing educational requirement for any renewal of such license."

SUBCHAPTER 3 — BOND REQUIREMENTS — POSTING OF BONDSMEN LIST

SECTION.

17-19-301. Premiums.

17-19-302. Collateral — Receipt required.

17-19-303. Bail bonds — Numbers — Report.

SECTION.

17-19-304. Maximum amount of unsecured bond.

17-19-305. Appearance bond.

17-19-306. Posting of bondsmen list.

Effective Dates. Acts 1993, No. 652, § 18: Mar. 24, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that current revenues supporting the operation and activities of the Arkansas Insurance Department are insufficient for efficient and productive operation of the Insurance Department in view of its myriad duties to protect the insurance-buying consumers of this State and to regulate the Arkansas activities of insurers, insurance agents and similar licensees, and professional bail bond companies. The provisions of this Act are essential to the operations of the Arkansas Insurance Department and delay in the effective date of this Act could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 1000, § 30: July 2, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the laws of this State concerning the insurance matters covered in this Omnibus Act are inadequate for the protection of the public. Further, the laws of this State as to Small Employer Health Insurance are not consistent with federal laws, particularly the Health Insurance Portability and Accountability Act of 1996 of the U.S. Congress; and the immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in effect from and after July 2, 1997. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective."

tive on the date the last house overrides the veto.”

17-19-301. Premiums.

(a) With the exception of other provisions of this section, the premium or compensation for giving bond or depositing money or property as bail on any bond shall be ten percent (10%), except that the amount may be rounded up to the nearest five-dollar amount.

(b) The minimum compensation for giving bond or depositing money or property as bail on any bond shall be not less than fifty dollars (\$50.00).

(c) If a bail bond or appearance bond issued by a licensee under this chapter must be replaced with another bail bond or appearance bond because of the licensee's violation of any provision of the laws of this state or any rule, regulation, or order of the Professional Bail Bond Company and Professional Bail Bondsman Licensing Board, the licensee who violated the provision and who caused the replacement to be required shall pay all the premium amount for the replacement bond, in an amount not to exceed the amount of the original bond, without any contribution from the respective defendant or principal.

(d)(1)(A) In addition to the ten percent (10%) bail or appearance bond premium or compensation allowed in subsection (a) of this section, and commencing on April 1, 1993, each licensed professional bail bond company shall charge and collect as a nonrefundable administrative and regulatory fee for the State Insurance Department Trust Fund an additional ten dollars (\$10.00) per bond fee for giving bond for every bail and appearance bond issued by the licensed professional bail bond company by or through its individual licensees.

(B) The administrative and regulatory fees payable by these companies to the fund for the support and operation of the department, and collected by the bail bond companies as required by this section, shall be reported and filed with the Insurance Commissioner no later than fifteen (15) calendar days after the end of each calendar quarter, contemporaneous with the professional bail bond company's filing of its quarterly bail bond report with the department.

(C) A notarized annual reconciliation of all such fees collected in the preceding calendar year for the fund shall be filed by each licensed professional bail bond company at a time and on forms prescribed by the commissioner.

(D) The commissioner may in his or her discretion grant an extension for good cause shown upon timely written request.

(E) In no event shall the administrative and regulatory fees payable by the bail bond companies to the fund exceed ten dollars (\$10.00) per bond, as required by this subchapter, exclusive of statutory licensure fees elsewhere in this chapter.

(2)(A) Absent an extension the commissioner granted for good cause to a company and in addition to any license suspension or revocation,

the commissioner may in his or her discretion order after notice and a hearing a professional bail bond company failing timely to report or pay the regulatory fee to the fund by and through the commissioner shall be liable to the fund for a monetary penalty of one hundred dollars (\$100) per day for each day of delinquency.

(B) The commissioner may pursue any appropriate legal remedies on behalf of the fund to collect any delinquent fees and penalties owed pursuant to this section as special revenues to the fund.

(3) Upon collection of the regulatory fees and any monetary penalties payable to the fund and assessed under this section, the commissioner shall deposit all fees and penalties directly into the fund as special revenues.

(4)(A) Upon failure of the bail bond company to remit the fees timely, the commissioner may pursue civil legal remedies against the non-complying bail bond company on behalf of the fund to recover the balance of the fees and any penalties owed.

(B) In its discretion, the board may also fine, or suspend or revoke the license of, any professional bail bond company failing to remit or pay timely the fees required by this section.

(5)(A) Other than sole proprietors licensed as professional bail bond companies, individual bail bondsmen are exempt from the duty and responsibility of payment of the administrative and regulatory fees to the fund, except that the individual licenses of such individual employees of the professional bail bond company may be suspended or revoked by the commissioner pursuant to the administrative procedures provided in this chapter if the individual licensee fails to comply with his or her duties in proper collection of the bail bond premiums earmarked for later payment to the fund pursuant to this subsection, if he or she converts such moneys to his or her own use, or commits other infractions in regard to collection of such premium amounts.

(B) In those instances, the violations of the individual may in the commissioner's discretion be attributed to the employing professional bail bond company for good cause shown, and its license may be sanctioned by the commissioner pursuant to the administrative procedures provided in this chapter.

(C) Further, upon criminal conviction of the individual bondsman for theft of property in connection with fraudulent conversion of those premium amounts due the fund, the board shall revoke the individual's license, and in its discretion, fine or suspend or revoke the license of, the employing professional bail bond company if it assisted the individual in such fraudulent conduct.

(6)(A) For purposes of § 17-19-205 requiring the professional bail bond company's deposit of a letter of credit or certificate of deposit for the faithful performance of its duties, the company's payment of the administrative and regulatory fee as required by this subsection shall be considered to be and shall be a duty of the licensee so as to allow the commissioner to make a claim against the security deposit

required in § 17-19-205 on behalf of the fund for the balance of any owed and unpaid administrative and regulatory fees the professional bail bond company still owes to the fund, and the commissioner shall promptly proceed to make claims against such security deposits on behalf of the fund, up to the limit of the company's deposit for any remaining fee balance due, in the manner provided in this subchapter for any claim against the deposit required herein.

(B) Under no circumstances shall such deposits held for the fund, or fees or any moneys deposited into the fund be subject to any levy or assessment of any kind, including forfeiture claims, misconduct claims, or general creditor claims of the bail bond company, subject to garnishment or other creditors' remedies under Title 16 of this Code or other provisions of Arkansas law.

(e)(1) In addition to the premiums, compensation, and fees allowed in subsections (a) and (d) of this section, each bail bond company shall charge and collect twenty dollars (\$20.00) as a nonrefundable fee for the Arkansas Public Defender Commission.

(2) All fees collected shall be forwarded to the commission for deposit into the Public Defender User Fee Fund.

(3)(A) The commission shall deposit the money collected into the existing account within the State Central Services Fund entitled "Public Defender User Fees".

(B)(i) Three dollars (\$3.00) of each fee collected under this section shall be remitted to each county in the state to defray the operating expenses of each county's public defender office.

(ii) The commission shall remit quarterly to each county treasurer the county's portion of the fee collected under this section using the formula for the County Aid Fund under § 19-5-602.

(4) The fees collected by the bail bond companies required under this subsection shall be reported and filed with the commission quarterly.

(5) A notarized annual reconciliation of all fees collected in the preceding calendar year shall be filed by each bail bond company by February 15 on forms provided by the commission.

(6) In addition to the bail or appearance bond premium or compensation allowed under this section and § 17-19-111, each licensed professional bail bond company shall charge and collect a processing fee of five dollars (\$5.00) on each bail bond in order to defray the surety's costs incurred by the quarterly and annual reports to the commission and to further defray the surety's costs incurred in the collection of all fees due owing and collected on behalf of the commission.

(7) The commission may pursue any appropriate legal remedy for the collection of any delinquent fees owed under this subsection.

(8) Upon collection of any fees and penalties, the commission shall deposit all fees and penalties directly into the Public Defender User Fees Fund account within the State Central Services Fund.

History. Acts 1989, No. 417, § 1; 1993, No. 652, § 6; 1995, No. 827, § 6; 1997, No. 1000, §§ 12-14; 2003, No. 1778, § 1; 2005, No. 1956, § 1; 2007, No. 190, § 1; 2007, No. 730, §§ 2, 3.

A.C.R.C. Notes. Acts 2007, No. 1223, § 10, provided: “FEE GENERATION AND SUPPORT. Unless specified otherwise in Arkansas Code § 17-19-301(e) the monies collected by each bail bond company under the authority of § 17-19-301(e) shall be deposited into the State Treasury to the credit of the Public Defender User Fees Fund within the State Central Services Fund.

“Of the fee collected by each licensed professional bail bond company, three dollars (\$3.00) shall be transferred to the various Counties for the sole purpose of defraying the operating expenses of the local public defenders’ office. The remaining monies collected shall be used to defray operating expenses of the Commission.

“On a quarterly basis, from the Bail Bond-County Public Defender line item, the Commission shall remit to each County its portion of the three dollars (\$3.00) per bail bond fee collected based upon the formula used for state aid for counties. This formula is as follows: 75% of the money is distributed equally to all 75 Counties and the remaining 25% is distributed per capita.

“The provisions of this section shall be in effect only from July 1, 2007 through June 30, 2009.”

Acts 2009, No. 1319, § 9, provided: “FEE GENERATION AND SUPPORT — COURTS. Unless specified otherwise in Arkansas Code § 5-4-303(g) and Arkansas Code § 16-87-213 the monies collected by the courts under the authority of § 5-4-303(g) and § 16-87-213 shall be deposited into the State Treasury to the credit of the State Central Services Fund.

“In the event that the law requires that the fees levied under § 5-4-303(g) be deposited into the State Administration of Justice Fund, the State Treasurer shall transfer the amount of the fees collected each month under the authority of Arkansas Code § 5-4-303(g) from the State Administration of Justice Fund to the State Central Services Fund.

“The provisions of this section shall be in effect only from July 1, 2009 through June 30, 2010.”

Acts 2009, No. 1319, § 10, provided: “Unless specified otherwise in Arkansas Code § 17-19-301(e) the monies collected by each bail bond company under the authority of § 17-19-301(e) shall be deposited into the State Treasury to the credit of the Public Defender User Fees Fund within the State Central Services Fund.

“Of the fee collected by each licensed professional bail bond company, three dollars (\$3.00) shall be transferred to the various Counties for the sole purpose of defraying the operating expenses of the local public defenders’ office. The remaining monies collected shall be used to defray operating expenses of the Commission.

“On a quarterly basis, from the Bail Bond-County Public Defender line item, the Commission shall remit to each County its portion of the three dollars (\$3.00) per bail bond fee collected based upon the formula used for state aid for counties. This formula is as follows: 75% of the money is distributed equally to all 75 Counties and the remaining 25% is distributed per capita.

“The provisions of this section shall be in effect only from July 1, 2009 through June 30, 2010.”

Acts 2010, No. 285, § 9, provided: “FEE GENERATION AND SUPPORT — COURTS. Unless specified otherwise in Arkansas Code § 5-4-303(g) and Arkansas Code 16-87-213 the monies collected by the courts under the authority of § 5-4-303(g) and 16-87-213 shall be deposited into the State Treasury to the credit of the State Central Services Fund.

“In the event that the law requires that the fees levied under § 5-4-303(g) be deposited into the State Administration of Justice Fund, the State Treasurer shall transfer the amount of the fees collected each month under the authority of Arkansas Code § 5-4-303(g) from the State Administration of Justice Fund to the State Central Services Fund.

“The provisions of this section shall be in effect only from July 1, 2010 through June 30, 2011.”

Acts 2010, No. 285, § 10, provided: “FEE GENERATION AND SUPPORT — BAIL BOND FEES. Unless specified otherwise in Arkansas Code § 17-19-301(e) the monies collected by each bail bond company under the authority of § 17-19-301(e) shall be deposited into the State

Treasury to the credit of the Public Defender User Fees Fund within the State Central Services Fund.

"Of the fee collected by each licensed professional bail bond company, three dollars (\$3.00) shall be transferred to the various Counties for the sole purpose of defraying the operating expenses of the local public defenders' office. The remaining monies collected shall be used to defray operating expenses of the Commission.

"On a quarterly basis, from the Bail Bond-County Public Defender line item, the Commission shall remit to each County its portion of the three dollars (\$3.00) per bail bond fee collected based upon the formula used for state aid for counties. This formula is as follows: 75%

of the money is distributed equally to all 75 Counties and the remaining 25% is distributed per capita.

"The provisions of this section shall be in effect only from July 1, 2010 through June 30, 2011."

Amendments. The 2005 amendment substituted "twenty dollars (\$20.00)" for "ten dollars (\$10.00)" in (e)(1); and added (e)(7) and (e)(8).

The 2007 amendment by No. 190, in (e), deleted "beginning July 1, 2003" following "this section" in (1), added (3)(B), and made a stylistic change.

The 2007 amendment by No. 730 substituted "fifty dollars (\$50.00)" for "thirty-five dollars (\$35.00)" in (b); and substituted "five dollars (\$5.00)" for "three dollars (\$3.00)" in (e)(6).

17-19-302. Collateral — Receipt required.

When a licensee accepts collateral, he or she shall give a prenumbered written receipt for it, and this receipt shall give in detail a full account of the collateral received. The licensee may perfect his or her lien on the collateral by any procedure available under the Uniform Commercial Code, § 4-1-101 et seq., or any other procedure provided for by law.

History. Acts 1989, No. 417, § 1; 1997, No. 973, § 9.

17-19-303. Bail bonds — Numbers — Report.

(a) Bail bonds shall be written on numbered forms.

(b) The Professional Bail Bond Company and Professional Bail Bondsman Licensing Board shall assign numbers for forms to professional bail bond companies and shall prescribe the method of affixing the numbers to the forms.

(c)(1) Each professional bail bond company shall file a bail bond report quarterly with the board.

(2) The report shall include the following information on each bail bond:

(A) The assigned number of the bond and current status of the bond, whether pending disposition or exonerated;

(B) To whom the bond was written;

(C) The date the bail bond was written;

(D) The defendant and the charges against the defendant;

(E) The court;

(F) The amount of the bail bond; and

(G) The portion of the bail bond that is secured and the unsecured portion.

History. Acts 1989, No. 417, § 1; 1995, No. 827, § 7.

17-19-304. Maximum amount of unsecured bond.

The maximum amount of unsecured bond commitment allowed for a professional bail bond company shall be determined by the following formulas:

(1) Not to exceed one hundred thousand dollars (\$100,000) for each twenty-five thousand dollars (\$25,000) of letters of credit or certificates of deposit filed with the Professional Bail Bond Company and Professional Bail Bondsman Licensing Board by the professional bail bond company; and

(2) Ten (10) times the net worth of the professional bail bond company as stated on the financial statement filed with the board at the time of licensing or annual license renewal. The financial statements must be prepared in accordance with standards established by the American Institute of Certified Public Accountants.

History. Acts 1989, No. 417, § 1; 1993, No. 1278, § 1; 1995, No. 827, § 7.

17-19-305. Appearance bond.

Upon issuance of the license, a professional bail bondsman shall not issue an appearance bond exceeding the monetary amount for each recognizance which is specified in and authorized by the power of attorney filed with the Professional Bail Bond Company and Professional Bail Bondsman Licensing Board until the board receives a duly executed power of attorney from the professional bail bond company evidencing or authorizing increased monetary limits or amounts for the recognizance.

History. Acts 1989, No. 417, § 1.

17-19-306. Posting of bondsmen list.

(a)(1) The chief law enforcement officers of any facilities having individuals or prisoners in their custody shall post in plain view in the facility housing those individuals or prisoners a list of registered bonding companies.

(2) The list shall be prepared by the Professional Bail Bond Company and Professional Bail Bondsman Licensing Board and shall contain the names of the professional bail bond companies that are registered with the board for the purpose of being included on the list.

(3) This registration is for the purpose of being on the phone list in each county only.

(4)(A) Once a professional bail bond company has registered to be on the phone list, it shall not be necessary for it to register each year.

(B) The company shall keep its place on the list from year to year unless the company's license has been revoked, canceled, or not renewed.

(5) The list shall be posted in each municipality of the county.

(b)(1)(A) Professional bail bond companies shall be included on the list in the order in which they were initially registered with the circuit clerk pursuant to this chapter.

(B) However, a company with a revoked, canceled, or nonrenewed license shall be removed from the list.

(2)(A) On or before January 1, 2008, the circuit clerk of each county shall certify the list as it exists on the date of certification and forward the certified list to the board.

(B) After January 1, 2008, the board shall maintain the list and be responsible for registrations.

(3)(A) The order of the company names shall not change from year to year.

(B) However, a company with a revoked, canceled, or nonrenewed license shall be removed from the list.

(c) The list shall be prepared by the board pursuant to the following specifications:

(1) The list shall contain three (3) columns that shall be headed as follows:

(A) Bail bond company;

(B) Local address; and

(C) Telephone number;

(2) Each column shall contain the following information:

(A) Bail Bond Company. The professional bail bond company name and code number shall be typed in the first column on the left-hand side of the page, with the home office address, city, state, zip code, and home office telephone numbers directly under the company name in the same column. No more than two (2) telephone numbers shall be listed for each company;

(B) Local Address. The second column shall contain one (1) address for each bail bond company; and

(C) Telephone Number. The third column shall contain no more than two (2) telephone numbers per company, to be typed directly across the page from the local address, which appears in the second column; and

(3) A solid line shall be placed between the end of the listing of one company and the beginning of the listing of the next company so that each company is clearly identified.

(d) The list shall be prepared by the board in the format of the following example:

EXAMPLE

BAIL BOND COMPANY	LOCAL ADDRESS	TELEPHONE #
1. Company Name # AZ		555-0000
Home Office Address		1-800-666-0000
City, State, Zip		
Home Office		
Phone Number(s) (2)		
<hr/>		
2. Company Name # ZA		
Home Office Address		
City, State, Zip		
Home Office		
Phone Number(s) (2)		
<hr/>		
3. Company Name # DX		
Home Office Address		
City, State, Zip		
Home Office		
Phone Number(s) (2)		

History. Acts 1989, No. 417, § 1; 1993, No. 402, § 1; 2001, No. 1139, § 1; 2007, No. 674, § 2.

Amendments. The 2007 amendment

rewrote (a) through (c), and in (d), substituted “list shall be prepared by the board” for “list prepared by the circuit clerk shall be”.

CASE NOTES

Registration.

Registration for the purpose of being placed on a bondsmen list is obviously optional; however, once a properly licensed bondsman does so, subsection (c) (now subdivision (b)(1)(A)) of this section mandates that the order in which he registers permanently determines his position on the list. Bob Cole Bail Bonds, Inc. v. Howard, 307 Ark. 242, 819 S.W.2d 274 (1991).

Judgment was properly awarded to a circuit court clerk in an action by bail bond companies challenging the order in which bail bond companies were listed on a list sent to a jail because the clerk properly listed the bail bond companies in the order in which they registered. Bob Cole Bail Bonds v. Brewer, 374 Ark. 403, 288 S.W.3d 582 (2008).

SUBCHAPTER 4 — CONTINUING EDUCATION PROGRAM

SECTION.	SECTION.
17-19-401. Requirements.	17-19-403. [Repealed.]
17-19-402. Establishment of program — Schedule of fees.	

A.C.R.C. Notes. Acts 1993, No. 499, § 3, effective August 13, 1993, provided, in part that a person licensed as a professional bail bondsman prior to the effective day of this act, shall not be required to meet the educational requirement in order to obtain a license but shall be required to meet the minimum continuing

educational requirement for any renewal of such license.

References to “this chapter” in other provisions of subchapters 1-3 may not apply to this subchapter or §§ 17-19-102(b), 17-19-107 — 17-19-111 or § 17-19-212, which were enacted subsequently.

17-19-401. Requirements.

(a) Each person licensed as a professional bail bondsman shall annually complete not less than six (6) hours of continuing education in subjects relating to the authority and responsibilities of a bail bondsman as a condition of renewing his or her license.

(b) The continuing education shall not include written or oral examinations.

History. Acts 1993, No. 499, § 2; 1999, No. 567, § 4; 2005, No. 1935, § 1.

Amendments. The 2005 amendment substituted “six (6)” for “eight (8)” in (a).

17-19-402. Establishment of program — Schedule of fees.

(a) The Professional Bail Bond Company and Professional Bail Bondsman Licensing Board shall on an annual basis solicit proposals from education provider applicants that are approved by the State Board of Private Career Education as education providers, and upon review of the proposals, shall designate an entity or entities to establish an educational program for professional bail bondsmen which will enable bail bondsmen to meet the prelicense and continuing education requirements of §§ 17-19-212 and 17-19-401 et seq.

(b)(1) The board or its designee shall establish a schedule of fees to be paid by each bail bondsman for the educational training.

(2) The schedule of fees shall be subject to approval of the board.

History. Acts 1993, No. 499, § 4; 1997, No. 909, § 1; 2009, No. 491, § 1.

Amendments. The 2009 amendment, in (a), substituted “education provider applicants which are approved by the State

Board of Private Career Education as education providers” for “interested parties,” substituted “prelicense” for “education,” and made minor stylistic changes.

CASE NOTES

Cited: Mann v. Ark. Prof'l Bail Bondsman Licensing Bd., 88 Ark. App. 393, 199 S.W.3d 84 (2004).

17-19-403. [Repealed.]

Publisher's Notes. This section, concerning review and approval fee, was repealed by Acts 1997, No. 909, § 2. The

section was derived from Acts 1993, No. 499, § 5.

CHAPTER 20**BARBERS****SUBCHAPTER.**

1. BARBER LAW — GENERAL PROVISIONS.
2. BARBER LAW — STATE BOARD OF BARBER EXAMINERS.
3. BARBER LAW — REGISTRATION.
4. BARBER SCHOOLS.
5. BARBER TECHNICIANS.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-18-101 et seq.

RESEARCH REFERENCES

ALR. Injury to patron by barber, beauty shop or specialist, barber college or school of beauty culture. 81 A.L.R.4th 444.

Am. Jur. 11 Am. Jur. 2d, Barbers, § 4 et seq.

Ark. L. Rev. Case Notes — Equity — Injunctions — Unlicensed Practice of a Profession, 11 Ark. L. Rev. 177.

SUBCHAPTER 1 — BARBER LAW — GENERAL PROVISIONS**SECTION.**

17-20-101. Title.

17-20-102. Definitions.

SECTION.

17-20-103. Exemptions — Construction.

17-20-104. Penalties.

Effective Dates. Acts 1937, No. 313, § 25; Mar. 25, 1937. Emergency clause provided: "It is hereby ascertained and declared that the barbering profession in this state is utterly without regulation, that public health and general well-being demands that this profession be regulated both as to those who form a part of the profession and as to the sanitary conditions under which they labor. It is further declared that 41 states of the Union now have uniform barber laws and that those who cannot comply with the health and

sanitary features of said laws have migrated to the State of Arkansas and are following the profession in this state to the detriment of the general public, and because of all of these conditions, which exist, the immediate operation of this act is essential. An emergency is, therefore, declared to exist and it being necessary for the immediate preservation of the public peace, health and safety, this act shall take effect and be in full force from and after the date of its passage and approval."

CASE NOTES

Constitutionality.

Subchapters 1-3 of this chapter were held valid against contentions that they permitted confiscation of private property without due process of law, that they duplicated state agency power to prescribe sanitary regulations, that they were a

deprivation of the right to the pursuit of a vocation, that they were a local or special act enacted without proper notice, and that they sought to establish a virtual monopoly of the barber trade. *Beatty v. Humphrey*, 195 Ark. 1008, 115 S.W.2d 559 (1938).

17-20-101. Title.

Sections 17-20-101 — 17-20-104, 17-20-201 — 17-20-209, and 17-20-301 — 17-20-310 shall be known and may be cited as the “Arkansas Barber Law”.

History. Acts 1937, No. 313, § 24; Pope’s Dig., § 12091; A.S.A. 1947, § 71-522.

17-20-102. Definitions.

(a) As used in this chapter, unless the context otherwise requires, “barbering” means any one (1) or any combination of the following practices when performed upon the head, face, and neck for cosmetic purposes and done for the public generally for pay, either directly or indirectly:

- (1) Shaving or trimming the beard;
- (2) Cutting hair;
- (3) Giving facial and scalp massage or application of oils, creams, lotions, or other preparations, either by hand or mechanical appliances;
- (4) Singeing, shampooing, or applying chemicals;
- (5) Applying cosmetic preparations, antiseptics, powders, oils, clays, or lotions to scalp, face, or neck; and
- (6) Use of the traditional symbol known as the “barber pole”, which is composed of a vertical cylinder or pole with a ball on top, with alternating stripes of any combination including red and white, and red, white, and blue, which run diagonally along the length of the cylinder or pole, or any likeness thereof, with the intent to mislead the public in any manner that would make the public believe that barbering was being practiced in or that a licensed barber was employed in an establishment that does not employ barbers.

(b) Such practices when done for the treatment of physical or mental ailments or diseases shall not constitute barbering.

History. Acts 1937, No. 313, § 2; Pope’s Dig., § 12070; A.S.A. 1947, § 71-502; Acts 1989, No. 388, § 1; 1993, No. 1056, § 1.

Publisher’s Notes. Subdivision (a)(6) is printed as enacted.

17-20-103. Exemptions — Construction.

(a) The following persons, firms, or corporations are exempt from the provisions of §§ 17-20-101 — 17-20-104, 17-20-201 — 17-20-209, and 17-20-301 — 17-20-310 while in the proper discharge of their professional duties:

(1) Persons licensed by the laws of this state to practice the healing arts;

(2) Commissioned medical or surgical officers of the United States Army, Navy, or Marine Hospital Service or United States Public Health Service Commissioned Corps;

(3) Persons licensed or registered by the Arkansas State Board of Nursing; and

(4) Undertakers and morticians.

(b) Nothing contained in §§ 17-20-101 — 17-20-104, 17-20-201 — 17-20-209, and 17-20-301 — 17-20-310 shall be construed so as to conflict in any manner with the laws regulating the vocation of cosmetic therapy or beauty culture.

History. Acts 1937, No. 313, § 21; Pope's Dig., § 12089; Acts 1951, No. 127, § 17-26-101 et seq. § 9; A.S.A. 1947, § 71-521.

Cross References.

Cosmetology,

17-20-104. Penalties.

(a) Any person, firm, or corporation desiring to operate as a barber, barbershop, barber corporation, or barber school or college which fails to file an application for certificate of registration shall be deemed guilty of a misdemeanor.

(b) Any person, firm, or corporation which shall operate as a barber, barbershop, barber corporation, or barber school or college without a certificate of registration duly and legally issued by the State Board of Barber Examiners shall be deemed guilty of a misdemeanor, punishable upon conviction by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100).

(c) The willful making of any false statement to a material matter in any oath or affidavit which is required by the provisions of §§ 17-20-101 — 17-20-104, 17-20-201 — 17-20-209, and 17-20-301 — 17-20-310 shall be perjury and punishable as such.

(d) Each day of unlawful practice as described in this section shall constitute a separate offense.

(e) It shall be the duty of all prosecuting attorneys of the state and all political subdivisions of the state to enforce the provisions of this chapter and prosecute persons violating them.

History. Acts 1937, No. 313, § 14; § 7; A.S.A. 1947, § 71-514; Acts 1993, No. Pope's Dig., § 12082; Acts 1951, No. 127, 1056, § 2.

SUBCHAPTER 2 — BARBER LAW — STATE BOARD OF BARBER EXAMINERS

SECTION.

- 17-20-201. Creation — Members.
- 17-20-202. Officers and proceedings.
- 17-20-203. Executive secretary.
- 17-20-204. Personnel.
- 17-20-205. Meetings.

SECTION.

- 17-20-206. Rules and regulations — Inspections.
- 17-20-207. Annual reports.
- 17-20-208. Fees.
- 17-20-209. Disposition of funds.

Effective Dates. Acts 1937, No. 313, § 25: Mar. 25, 1937. Emergency clause provided: "It is hereby ascertained and declared that the barbering profession in this state is utterly without regulation, that public health and general well-being demands that this profession be regulated both as to those who form a part of the profession and as to the sanitary conditions under which they labor. It is further declared that 41 states of the Union now have uniform barber laws and that those who cannot comply with the health and sanitary features of said laws have migrated to the State of Arkansas and are following the profession in this state to the detriment of the general public, and because of all of these conditions, which exist, the immediate operation of this act is essential. An emergency is, therefore, declared to exist and it being necessary for the immediate preservation of the public peace, health and safety, this act shall take effect and be in full force from and after the date of its passage and approval."

Acts 1947, No. 125, § 4: Feb. 26, 1947. Emergency clause provided: "It is hereby ascertained and declared that additional regulation is required in the barbering profession for the general well-being of said profession. Therefore, an emergency is declared to exist, and it being necessary for the immediate preservation of the public peace, health and safety, this act shall take effect and be in full force from and after the date of its passage and approval."

Acts 1967, No. 240, § 3: Mar. 8, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that the maximum compensation provided by law for the secretary of the State Board of Barber Examiners is entirely inadequate to compensate the secretary for his services and that the per

diem allowance prescribed by law for the members of the State Board of Barber Examiners is sorely inadequate to compensate said board members and that this act is immediately necessary to correct this inequitable situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1971, No. 126, § 3: Feb. 19, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the maximum compensation provided by law for the secretary of the State Board of Barber Examiners is entirely inadequate to compensate the secretary for his services, that the per diem allowance prescribed by law for the members of the State Board of Barber Examiners is sorely inadequate to compensate said board members, and that this act is immediately necessary to correct this inequitable situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1975, No. 538, § 6: Mar. 21, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the license fees now prescribed by law to be collected by the Barber Examiners Board do not provide adequate funds to support the operation of the board and to enable it to properly carry out its functions and duties; that the present law relating to the reimbursement of the board and its employees for expenses incurred in the performance of their duties severely limits the amounts of such expense reimbursement; that this act is designed to increase the license fees to be collected by the Barber Examiners

Board to provide the necessary revenues to finance the operation of the board and to provide for reimbursement of the board and employees for expenses incurred in the performance of their duties in the same maximum amounts as prescribed in state travel regulations for other public employees; and that this act should be given effect immediately to accomplish this purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 524, § 4: July 1, 1977.

Acts 1981, No. 717, § 3: Mar. 25, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that regulatory boards and commissions covered by Acts 1977, No. 113 exist for the singular purpose of protecting the public health and welfare; that it is necessary and proper that the public be represented on such boards and commissions; that the operations of such boards and commissions have a profound effect on the daily lives of all Arkansans; and that the public's voice should not be muted on any question coming before such public bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 131, § 6, and No. 135, § 6: Feb. 10, 1983. Emergency clauses provided: "It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards

and commissions have a profound effect on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as to questions coming before such bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 563, § 10: Apr. 2, 1987. Emergency clause provided: "It is hereby found and determined that the provisions of this amendment will promote proper regulation and enforcement of the State Board of Barber Examiners' laws and that timely approval is necessary to correct an inequitable situation. Therefore, an emergency is hereby declared to exist and this amendment being necessary for the immediate preservation of the public peace, health and safety shall be in effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

CASE NOTES

Constitutionality.

Subchapters 1-3 of this chapter were held valid against contentions that they permitted confiscation of private property without due process of law, that they duplicated state agency power to prescribe

sanitary regulations, that they were a deprivation of the right to the pursuit of a vocation, that they were a local or special act enacted without proper notice, and that they sought to establish a virtual monopoly of the barber trade. *Beaty v.*

Humphrey, 195 Ark. 1008, 115 S.W.2d 559 (1938).

17-20-201. Creation — Members.

(a)(1) There is created a State Board of Barber Examiners, consisting of the Secretary of the State Board of Health, who shall be an ex officio member of the board, and five (5) members to be appointed by the Governor for a term of six (6) years.

(2) Three (3) of the members so appointed shall be practicing barbers who have followed the occupation of barbering in this state for at least five (5) years immediately prior to their appointment.

(3) One (1) member appointed by the Governor will be a public member to represent the consumer, and one (1) member appointed by the Governor to represent persons sixty-five (65) years of age and beyond. The two (2) members appointed under this subdivision (a)(3) shall not be actively engaged in or retired from the barbering profession. The two (2) positions may not be held by the same person. Both shall be full voting members but shall not participate in the grading of examinations.

(4) The five (5) members shall be appointed in such manner that two (2) of them shall reside in the geographical area north of I-40, two (2) shall reside in the geographical area south of I-40, and one (1) shall be appointed from the state at large.

(5) The membership of the Secretary of the State Board of Health on the State Board of Barber Examiners shall in no way be affected by the provisions of § 25-19-211 [Repealed].

(b)(1) Each member shall hold office until a successor is appointed and qualified.

(2) The Governor shall have the power to remove any member for gross incompetency, gross immorality, disability, any abuse of his or her official power, or other good cause and shall fill any vacancy thus occasioned by appointment within thirty (30) days after the vacancy occurs.

(3) Members appointed to fill vacancies caused by death, resignation, or removal shall serve only for the unexpired term of their predecessors.

(c) Each member of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1937, No. 313, §§ 15, 19; Pope's Dig., §§ 12083, 12087; Acts 1947, No. 125, § 3; 1951, No. 127, § 8; 1957, No. 278, § 2; 1961, No. 207, § 1; 1963, No. 102, § 1; 1967, No. 240, § 1; 1971, No. 126, § 1; 1975, No. 538, § 5; 1977, No. 113, §§ 1-3; 1981, No. 717, § 2; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; 1985, No. 133, § 2; A.S.A. 1947, §§ 6-617 — 6-619, 6-623 — 6-626, 71-515, 71-519;

Acts 1989, No. 388, § 2; 1997, No. 250, § 127.

Publisher's Notes. The terms of the members of the State Board of Barber Examiners, other than the representatives of consumers and the elderly, are arranged so that one term expires every two years.

Acts 1961, No. 207, § 2, provided that it was the purpose and intent of that act to

clarify the membership of the Secretary of the State Board of Health on the State Board of Barber Examiners and that nothing in that act should be construed to affect, alter, or change the membership of the existing Board of Barber Examiners.

Acts 1981, No. 717, § 1, provided that the purpose of the act was to provide consumer representatives on state boards and commissions affected by Acts 1977, No. 113, full voting authority as board members.

17-20-202. Officers and proceedings.

(a) The State Board of Barber Examiners shall organize by electing a chair from its own membership.

(b) A majority of the board shall constitute a quorum and may perform and exercise all the duties and powers devolving upon it.

(c) The board may be furnished suitable quarters for the conduct of its business and shall adopt and use a common seal for the authentication of its orders and records.

History. Acts 1937, No. 313, §§ 15, 16; Pope's Dig., § 12084; Acts 1961, No. 207, § 1; A.S.A. 1947, §§ 71-515, 71-516.

Publisher's Notes. As to the purpose and construction of Acts 1961, No. 207, see Publisher's Notes to § 17-20-201.

17-20-203. Executive secretary.

(a)(1) The State Board of Barber Examiners is authorized to employ an executive secretary, who shall not be a member of the board and who shall have the responsibility of keeping:

(A) A record of the board's proceedings;

(B) A record of persons registered as barbers and apprentices showing the name, place of business, and residence of each and the date and number of his or her certificate;

(C) A record of all certificates issued, refused, renewed, suspended, or revoked; and

(D) Such other records as may be directed by the board or required by law.

(2) The records shall be open to public inspection at all reasonable times.

(b) The executive secretary shall perform such other functions and duties as may be prescribed by law or directed by the board.

(c) The executive secretary shall receive such compensation for his or her services as may be prescribed by the board within the limitations of the biennial appropriation therefor made by the General Assembly.

(d) Before entering upon the discharge of the duties of his or her office, the executive secretary shall give a bond to the state, to be approved by the Governor and filed with the Auditor of State, in the sum of five thousand dollars (\$5,000), conditioned for the faithful performance of the duties of his or her office.

History. Acts 1937, No. 313, §§ 16, 17; Pope's Dig., §§ 12084, 12085; Acts 1977, No. 524, § 1; A.S.A. 1947, §§ 71-516, 71-516.2, 71-517.

A.C.R.C. Notes. The operation of sub-

section (d) of this section was suspended by adoption of a self-insured fidelity bond program for public officers, officials and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. Subsection (d) of

this section may again become effective upon cessation of coverage under that program. See § 21-2-703.

Publisher's Notes. Acts 1977, No. 524, § 3, provided that it was the purpose of

the act that the board should employ an executive secretary and that no member of the board should thereafter be employed by the board as secretary or in any other position.

17-20-204. Personnel.

The State Board of Barber Examiners is authorized to employ such other personnel as it deems necessary to carry out the provisions of §§ 17-20-101 — 17-20-104, 17-20-201 — 17-20-209, and 17-20-301 — 17-20-310 within such limits as may be provided by biennial appropriation of the General Assembly. All employees shall work under the direct supervision of the board.

History. Acts 1937, No. 313, § 19; § 2; 1963, No. 102, § 1; 1967, No. 240, Pope's Dig., § 12087; Acts 1947, No. 125, § 1; 1971, No. 126, § 1; 1975, No. 538, § 3; 1951, No. 127, § 8; 1957, No. 278, § 5; A.S.A. 1947, § 71-519.

17-20-205. Meetings.

The State Board of Barber Examiners shall hold a meeting in Little Rock once every month, or at such other places where, in the discretion of the board, there are a sufficient number of applicants to warrant holding an examination outside of Little Rock for the purpose of:

- (1) Passing upon barbers' applications;
- (2) Conducting an examination to determine an applicant's ability to receive a license and shall issue or refuse to issue a license thereon; and
- (3) Transacting any other business which may properly come before it.

History. Acts 1937, No. 313, § 6; Pope's Dig., § 12074; A.S.A. 1947, § 71-506; Acts 1989, No. 388, § 3.

17-20-206. Rules and regulations — Inspections.

(a) The State Board of Barber Examiners shall have authority to make and promulgate reasonable rules and regulations for the administration of the provisions of §§ 17-20-101 — 17-20-104, 17-20-201 — 17-20-209, and 17-20-301 — 17-20-310 and for the purpose of carrying out the intent of these subchapters.

(b) It shall prescribe sanitary requirements for barbershops and barber schools, subject to the approval of the State Board of Health.

(c) Any member of the board or its inspectors shall have authority to enter upon and to inspect any barbershop or barber school at any time during business hours.

(d) A copy of the rules and regulations and sanitary requirements adopted by the board shall be furnished by the board to the owner or manager of each barbershop and barber school, and a copy shall be posted in a conspicuous place in the barbershop or barber school.

(e) The board may correct any conflicts contained herein by promulgation of rules and regulations, subject to the approval of the Attorney General.

History. Acts 1937, No. 313, § 20; Pope's Dig., § 12088; A.S.A. 1947, § 71-520.

17-20-207. Annual reports.

(a) The State Board of Barber Examiners shall annually, on or before January 1, make a report to the Governor of all its official acts during the preceding year and of its receipts and disbursements and such recommendations as it may deem expedient.

(b) At the time of filing its annual report with the Governor, the board shall mail a copy of this report to each barber in the state licensed by the board.

History. Acts 1937, No. 313, § 16; Pope's Dig., § 12084; Acts 1971, No. 126, § 2; A.S.A. 1947, §§ 71-516, 71-516.1.

17-20-208. Fees.

(a) The State Board of Barber Examiners shall by regulation establish reasonable registration fees, renewal fees, examination fees, and such other fees as it deems necessary and appropriate to fulfill its duties.

(b) A duplicate certificate will be issued upon the filing of a statement covering the loss of the original certificate, certified by the oath of the applicant, and by submitting one (1) signed photograph, and the payment of a fee of five dollars (\$5.00) for the issuance of the duplicate certificate. Each duplicate certificate shall have the word "Duplicate" stamped across the face thereof and will bear the same number as the original certificate that it was issued in lieu of.

(c) Funds thus realized shall be expended for:

(1) The payment of the salary of the Executive Secretary of the State Board of Barber Examiners;

(2) Expenses and stipends in accordance with § 25-16-901 et seq.;

(3) Salary of registered barber inspectors and stenographers;

(4) Retainer fees for attorneys;

(5) Publication of the Arkansas Barber Law, §§ 17-20-101 — 17-20-104, 17-20-201 — 17-20-209, 17-20-301 — 17-20-310;

(6) Investigation of violations of the Arkansas Barber Law, §§ 17-20-101 — 17-20-104, 17-20-201 — 17-20-209, 17-20-301 — 17-20-310; and

(7) Such other purposes as may be directed by the board.

History. Acts 1937, No. 313, § 10; § 2; 1951, No. 127, § 5; 1957, No. 278, Pope's Dig., § 12078; Acts 1947, No. 125, § 1; 1975, No. 538, § 1; 1981, No. 103,

§ 1; 1985, No. 137, § 1; A.S.A. 1947, § 71-510; Acts 1989, No. 388, § 4; 1995, No. 749, §§ 1, 4; 1997, No. 250, § 128.

17-20-209. Disposition of funds.

(a)(1) All moneys received by the State Board of Barber Examiners under §§ 17-20-101 — 17-20-104, 17-20-201 — 17-20-209, and 17-20-301 — 17-20-310 shall be paid to the Executive Secretary of the State Board of Barber Examiners, who shall give a proper receipt for those moneys. At the end of each month, he or she shall report to the Auditor of State the total amount received by him or her under the provisions of §§ 17-20-101 — 17-20-104, 17-20-201 — 17-20-209, and 17-20-301 — 17-20-310 from all sources.

(2) The executive secretary shall at the same time deposit the entire amount of such receipts with the Treasurer of State, who shall place them to the credit of a special fund to be created and known as the "State Board of Barber Examiners Fund".

(b)(1) By its chair and executive secretary, the board shall from time to time certify to the Auditor of State the necessary expenses incurred by the board, including expense reimbursement and stipends as provided in § 25-16-901 et seq. The Auditor of State shall issue his or her warrant for the expenses, which shall be paid out of the funds so established for the maintenance of the board.

(2) No order shall be drawn by the Auditor of State on any fund other than the State Board of Barber Examiners Fund for any stipends or expenses of the board incident to the administration of §§ 17-20-101 — 17-20-104, 17-20-201 — 17-20-209, and 17-20-301 — 17-20-310.

(c) All funds so paid to the Treasurer of State shall remain and be a separate and permanent fund for the maintenance of the board and the administration of §§ 17-20-101 — 17-20-104, 17-20-201 — 17-20-209, and 17-20-301 — 17-20-310.

(d) All funds derived from civil penalties imposed by the board shall be deposited in one (1) or more depositories qualifying for the deposit of public funds. These funds shall be used by the board for administering the provisions of §§ 17-20-101 — 17-20-104, 17-20-201 — 17-20-209, and 17-20-301 — 17-20-310.

History. Acts 1937, No. 313, § 18; Pope's Dig., § 12086; A.S.A. 1947, § 71-518; Acts 1987, No. 563, § 4; 1997, No. 250, § 129.

A.C.R.C. Notes. Acts 1987, No. 563, § 1, provided: "Definitions. As used in this act:

"(A) 'Administrative Procedure Act' means Act 434 of 1967 as it now exists or is hereafter amended (Ark. Stat. Ann. § 5-701 et seq. [§ 25-15-201 et seq.]).

"(B) 'Arkansas Barber Law' means Act 313 of 1937 as it now exists or is hereafter amended (Ark. Stat. Ann. §§ 71-501 through 71-536 [§§ 17-20-101 — 17-20-310]).

"(C) 'Board' means the State Board of Barber Examiners created by section 15 of Act 313 of 1937 (Ark. Stat. Ann. § 71-515 [§ 17-20-201])."

SUBCHAPTER 3 — BARBER LAW — REGISTRATION

SECTION.

- 17-20-301. Certificate required.
- 17-20-302. Qualifications of applicants.
- 17-20-303. Application.
- 17-20-304. Examinations.
- 17-20-305. Display of certificates.
- 17-20-306. [Repealed.]
- 17-20-307. Renewal — Expiration — Restoration.

SECTION.

- 17-20-308. Grounds for disciplinary action.
- 17-20-309. Denial, suspension, or revocation — Procedure.
- 17-20-310. Civil penalty.

Effective Dates. Acts 1937, No. 313, § 25: Mar. 25, 1937. Emergency clause provided: "It is hereby ascertained and declared that the barbering profession in this state is utterly without regulation, that public health and general well-being demands that this profession be regulated both as to those who form a part of the profession and as to the sanitary conditions under which they labor. It is further declared that 41 states of the Union now have uniform barber laws and that those who cannot comply with the health and sanitary features of said laws have migrated to the State of Arkansas and are following the profession in this state to the detriment of the general public, and because of all of these conditions, which exist, the immediate operation of this act is essential. An emergency is, therefore, declared to exist and it being necessary for the immediate preservation of the public peace, health and safety, this act shall take effect and be in full force from and after the date of its passage and approval."

Acts 1947, No. 125, § 4: Feb. 26, 1947. Emergency clause provided: "It is hereby ascertained and declared that additional regulation is required in the barbering profession for the general well-being of said profession. Therefore, an emergency is declared to exist, and it being necessary for the immediate preservation of the public peace, health and safety, this act shall take effect and be in full force from and after the date of its passage and approval."

Acts 1987, No. 563, § 10: Apr. 2, 1987. Emergency clause provided: "It is hereby found and determined that the provisions of this amendment will promote proper regulation and enforcement of the State Board of Barber Examiners' laws and that timely approval is necessary to correct an inequitable situation. Therefore, an emergency is hereby declared to exist and this amendment being necessary for the immediate preservation of the public peace, health and safety shall be in effect from and after its passage and approval."

CASE NOTES

Constitutionality.

Subchapters 1-3 of this chapter were held valid against contentions that they permitted confiscation of private property without due process of law, that they duplicated state agency power to prescribe sanitary regulations, that they were a deprivation of the right to the pursuit of a vocation, that they were a local or special

act enacted without proper notice, and that they sought to establish a virtual monopoly of the barber trade. *Beaty v. Humphrey*, 195 Ark. 1008, 115 S.W.2d 559 (1938).

Cited: *Union Carbide & Carbon Corp. v. White River Distributors*, 224 Ark. 558, 275 S.W.2d 455 (1955).

17-20-301. Certificate required.

(a) It shall be unlawful:

(1) To practice barbering in this state without a certificate of registration as a registered barber issued pursuant to the provisions of §§ 17-20-101 — 17-20-104, 17-20-201 — 17-20-209, and 17-20-301 — 17-20-310 by the State Board of Barber Examiners as established in § 17-20-201 et seq.;

(2) To act or attempt to act as a barber without a certificate of registration as a registered barber duly issued by the board; and

(3) For any person, firm, or corporation to operate a barbershop unless it is at all times operated under the personal supervision and management of a registered barber.

(b) It shall be the responsibility of all barbershop owners to assure that their employees have appropriate licenses.

History. Acts 1937, No. 313, § 1; Pope's Dig., § 12069; Acts 1947, No. 125, § 1; A.S.A. 1947, § 71-501; Acts 1987, No. 563, § 6; 1989, No. 388, § 5.

A.C.R.C. Notes. Acts 1987, No. 563, § 1, provided: "Definitions. As used in this Act:

"(A) 'Administrative Procedure Act' means Act 434 of 1967 as it now exists or is hereafter amended (Ark. Stat. Ann. § 5-701 et seq. [§ 25-15-201 et seq.]).

"(B) 'Arkansas Barber Law' means Act 313 of 1937 as it now exists or is hereafter amended (Ark. Stat. Ann. §§ 71-501 through 71-536 [§§ 17-20-101 — 17-20-310]).

"(C) 'Board' means the State Board of Barber Examiners created by section 15 of Act 313 of 1937 (Ark. Stat. Ann. § 71-515 [§ 17-20-201])."

17-20-302. Qualifications of applicants.

Any person shall be qualified to receive a certificate of registration to practice as a registered barber who:

(1) Is qualified under the provisions of §§ 17-20-101 — 17-20-104, 17-20-201 — 17-20-209, and 17-20-301 — 17-20-310;

(2) Is of good moral character and temperate habits;

(3) Has passed a satisfactory examination conducted by the State Board of Barber Examiners to determine his or her fitness to practice barbering and furnishes a diploma showing graduation from a grammar school or its equivalent as determined by an examination conducted by the board;

(4) Is at least sixteen and one-half (16 ½) years of age; and

(5) Has received training approved by the appropriate licensing authorities.

History. Acts 1937, No. 313, §§ 4, 5; Pope's Dig., §§ 12072, 12073; Acts 1947, No. 125, § 1; 1951, No. 127, § 2; 1985, No. 133, § 1; A.S.A. 1947, §§ 71-504, 71-505; Acts 1989, No. 388, § 6; 1995, No. 749, § 2.

17-20-303. Application.

(a) Any person, firm, or corporation desiring to operate as a barber, barbershop, barber corporation, or barber school or college shall file an application for a certificate of registration on a form furnished by the State Board of Barber Examiners.

(b) Any person who desires to practice barbering in this state shall file with the Executive Secretary of the State Board of Barber Examiners a written application, under oath, together with two (2) identical two-inch by three-inch signed photographs and satisfactory proof that the applicant is of good moral character.

(c) Any person recently coming into this state who has an unrevoked or unexpired license issued by the proper authorities of another state may be issued a certificate of registration as a registered barber upon making the application as required by law and upon the payment of a one hundred fifty dollar reciprocity fee, subject to the conditions outlined in subsection (d) of this section. The reciprocity fee shall include the license fee until the beginning of the next renewal period.

(d)(1) Any person applying for reciprocity who has at least one thousand five hundred (1,500) hours of training may be granted registration by reciprocity upon completion of those hours and proof of licensure by the proper authorities in the state in which the person received the training.

(2) Any person applying for reciprocity who has fewer than one thousand five hundred (1,500) hours of training must also have been continuously engaged in the practice of barbering for at least one (1) year in addition to providing proof of licensure in the state where the applicant received training or holds a license.

History. Acts 1937, No. 313, §§ 7, 8, 14; Pope's Dig., §§ 12075, 12076; Acts 1951, No. 127, §§ 3, 4, 7; 1981, No. 698, § 1; A.S.A. 1947, §§ 71-507, 71-508, 71-514; Acts 1987, No. 563, § 5; 1989, No. 388, § 7; 1993, No. 1056, § 3.

A.C.R.C. Notes. As to definitions for Acts 1987, No. 563, see A.C.R.C. Notes, § 17-20-301.

17-20-304. Examinations.

(a) An applicant for a certificate of registration to practice as a registered barber who fails to pass a satisfactory examination conducted by the State Board of Barber Examiners may apply for another examination at any future meeting of the board.

(b) The fee for each reexamination shall be the same as the fee for original examination.

(c) Any person enrolled as a student in any barber school in this state shall be given credit for all time spent therein.

(d) Examinations shall include both a practical demonstration and a written and oral test and shall embrace the subjects usually taught in schools of barbering approved by the board.

(e) A certificate of registered barber shall be issued by the board to any applicant who shall pass a satisfactory examination making a grade of not less than seventy-five percent (75%) in all subjects upon which he or she is examined and who shall possess the qualifications required in this chapter.

History. Acts 1937, No. 313, §§ 4-6; 133, § 1; A.S.A. 1947, §§ 71-504 — 71-Pope's Dig., §§ 12072-12074; Acts 1947, 506; Acts 1989, No. 388, § 8. No. 125, § 1; 1951, No. 127, § 2; 1985, No.

17-20-305. Display of certificates.

Every holder of a certificate of registration shall display it in a conspicuous place adjacent to or near his or her work chair.

History. Acts 1937, No. 313, § 9; Pope's Dig., § 12077; A.S.A. 1947, § 71-509.

17-20-306. [Repealed.]

Publisher's Notes. This section, concerning apprentices generally, was repealed by Acts 1989, No. 388, § 12. The section was derived from Acts 1937, No. 313, § 4; Pope's Dig., § 12072; Acts 1947, No. 125, § 1; 1985, No. 133, § 1; A.S.A. 1947, § 71-504.

17-20-307. Renewal — Expiration — Restoration.

(a) Every registered barber who continues in active practice or service shall annually on or before September 1 renew his or her certificate of registration by paying the required fee.

(b) Every certificate of registration which has not been renewed, as herein required, in any year shall expire on September 1 in that year.

(c)(1) A registered barber whose certificate of registration has been expired for sixty (60) days or less may have his or her certificate restored immediately upon payment of the required restoration fee.

(2)(A) Any registered barber who retires from the practice of barbering and fails to keep his or her registration certificate renewed for not more than three (3) years may renew his or her certificate of registration upon payment of the required restoration fee.

(B) If the time elapsed is more than three (3) years, he or she must take and pass the required examination and pay the examination fee as set forth by the board.

History. Acts 1937, No. 313, § 11; 511; Acts 1989, No. 388, § 9; 1995, No. Pope's Dig., § 12079; Acts 1951, No. 127, 749, § 3. § 6; 1981, No. 698, § 2; A.S.A. 1947, § 71-

17-20-308. Grounds for disciplinary action.

The State Board of Barber Examiners may refuse to issue or renew or may suspend or revoke any certificate of registration, take other

appropriate disciplinary action, and impose a civil penalty as provided in § 17-20-310 for any of the following:

- (1) Conviction of a felony shown by a certified copy of the record of the court of conviction;
- (2) Malpractice or gross incompetency;
- (3) Affliction of the applicant, registered barber, or registered apprentice barber with an infectious or communicable disease;
- (4) Advertising by means of knowingly false or deceptive statements;
- (5) Advertising, practicing, or attempting to practice under a trade name or name other than one's own;
- (6) Habitual drunkenness or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs;
- (7) Immoral or unprofessional conduct;
- (8) The violation of any of the sanitary regulations promulgated by either the board or the Department of Health for the regulation of barbershops and barber schools; or
- (9) Continuing employment in a barbershop wherein the sanitary regulations of the board or the department promulgated for the regulation of barbershops or barber schools are known by the registered barber or registered apprentice to be violated.

History. Acts 1937, No. 313, § 12;
Pope's Dig., § 12080; A.S.A. 1947, § 71-512; Acts 1993, No. 1056, § 4.

RESEARCH REFERENCES

Ark. L. Rev. Administrative License
Revocation in Arkansas, 14 Ark. L. Rev.
139.

17-20-309. Denial, suspension, or revocation — Procedure.

(a) No action in refusing to issue or renew or in suspending or revoking a certificate of registration for any of the causes listed in § 17-20-308 shall be taken until the accused has been furnished with a statement of the specific charges against him or her and notice of the time and place of hearing thereof.

(b) The statement of charges and notice must be served personally upon the person or mailed to his or her last known address at least twenty (20) days prior to the hearing.

(c) The accused may be present at the hearing in person or by counsel, or both.

(d) Upon the hearing of any such proceeding, the State Board of Barber Examiners may administer oaths and may procure, by its subpoena, the attendance of witnesses and the production of relevant books and papers.

(e) Any circuit court or any judge of a circuit court, either in term time or in vacation, upon application either of the accused or of the board or member thereof, may, by order duly entered, require the

attendance of witnesses and the production of relevant books and papers before the board in any hearing relating to the refusal, suspension, or revocation of certificates of registration.

(f) If upon the hearing the board finds the charges are true, it may refuse to issue or renew a certificate of registration or may revoke or suspend the certificate if it has been issued.

(g) Any person aggrieved by the action of the board, as provided in this section, may appeal from the action to the Pulaski County Circuit Court and to the Supreme Court as in other cases made and provided.

History. Acts 1937, No. 313, § 13; Pope's Dig., § 12081; Acts 1957, No. 278, § 3; A.S.A. 1947, § 71-513.

Publisher's Notes. This section may be affected by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

17-20-310. Civil penalty.

(a) Whenever the State Board of Barber Examiners, after a hearing conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., determines that any person has violated any provision of the Arkansas Barber Law, §§ 17-20-101 — 17-20-104, 17-20-201 — 17-20-209, and 17-20-301 — 17-20-310 or any regulation promulgated by the board pursuant to it, the board may impose a civil penalty on the person not to exceed two hundred fifty dollars (\$250).

(b)(1) If a licensed barber against whom a civil penalty has been imposed by the board fails to pay the penalty, the board may file an action in the Pulaski County Circuit Court to collect the civil penalty.

(2) If the board prevails in the action, the defendant shall be directed to pay, in addition to the civil penalty, reasonable attorney's fees and costs incurred by the board in prosecuting the action.

(c) Any person aggrieved by the action of the board imposing civil penalties may appeal the decision in the manner and under the procedure prescribed in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., for appeals from administrative decisions.

History. Acts 1987, No. 563, §§ 2, 3; 1993, No. 1056, § 5.

Acts 1987, No. 563, see A.C.R.C. Notes, § 17-20-301.

A.C.R.C. Notes. As to definitions for

SUBCHAPTER 4 — BARBER SCHOOLS

SECTION.

- 17-20-401. Definition.
- 17-20-402. Enforcement.
- 17-20-403. Application for registration —
Public welfare considerations.
- 17-20-404. Application for registration —
Contents.
- 17-20-405. Licensing prerequisites —
Managers and teachers.
- 17-20-406. Manager certification.

SECTION.

- 17-20-407. Curriculum.
- 17-20-408. Facility — Equipment.
- 17-20-409. Fees.
- 17-20-410. Revocation or suspension of
certificate.
- 17-20-411 — 17-20-419. [Reserved.]
- 17-20-420. Application for enrollment.
- 17-20-421. Applicants for admission or
examination — Qualification.

SECTION.

17-20-422. Application for examination.
17-20-423. Sanitary rules and regulations.

SECTION.

17-20-424. Inspection of student work.

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Effective Dates. Acts 1975, No. 538, § 6: Mar. 21, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the license fees now prescribed by law to be collected by the Barber Examiners Board do not provide adequate funds to support the operation of the board and to enable it to properly carry out its functions and duties; that the present law relating to the reimbursement of the board and its employees for expenses incurred in the performance of their duties severely limits the amounts of such expense reimbursement; that this act is designed to increase the license fees to be collected by the Barber Examiners Board to provide the necessary revenues to finance the operation of the board and to provide for reimbursement of the board and employees for expenses incurred in the performance of their duties in the same maximum amounts as prescribed in state travel regulations for other public employees; and that this act should be given effect immediately to accomplish this purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 1032, § 2: Apr. 2, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1056 of 1993 repealed Arkansas Code 17-18-406(a) which provided that no person should manage or operate a barber college unless the person was an Arkansas resident for at least three years and had at least three years experience as a barber teacher in an approved barber school or college; that another section of the Arkansas Code substantially duplicated that requirement and was inadvertently not repealed by Act 1056; that as a result, confusion exists in the law; that this act clarifies the law by fulfilling the intent of Act 1056 of 1993; and that this act should go into effect as soon as possible in order to clarify the law at the earliest date. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-20-401. Definition.

As used in this subchapter, unless the context otherwise requires, "college" includes school of barbering, college of barbering, barber school, barber college, and any other place or institution of instruction training persons to engage in the practice of barbering.

History. Acts 1961, No. 109, § 2; A.S.A. 1947, § 71-524.

17-20-402. Enforcement.

The State Board of Barber Examiners may commence and maintain all proper and necessary proceedings in order to enforce compliance with any provisions of the laws, rules, or regulations pertaining to the practice of barbering and, in addition to other remedies, may enforce compliance by injunction.

History. Acts 1961, No. 109, §§ 6, 13;
A.S.A. 1947, §§ 71-528, 71-535.

17-20-403. Application for registration — Public welfare considerations.

(a) Every applicant for a certificate of registration to operate a new barber college shall offer proof sufficient to the State Board of Barber Examiners that the establishment of a new barber college in a particular area will not be detrimental to the public welfare.

(b) In considering whether the establishment of a new barber college in a particular area will be detrimental to the public welfare, the board shall consider the need for barber college facilities or additional barber college facilities, as the case may be, in the community where the proposed barber college is to be located, giving particular consideration to:

- (1) The economic character of the community;
- (2) The adequacy of existing barbershops and barber colleges in that community;
- (3) The ability of the community to support the proposed barber college;
- (4) The character of adjacent communities and the extent to which the establishment of the proposed barber college would draw patrons from such adjacent communities; and
- (5) The social and economic effect of the establishment of a barber college on the community where it is proposed to be located and on the adjacent communities.

History. Acts 1961, No. 109, § 4; A.S.A.
1947, § 71-526.

17-20-404. Application for registration — Contents.

An application for a license and approval as a registered school or college of barbering shall contain, under oath of the applicant or proper officer of a corporation or association, the following:

- (1) The full name of the applicant, person, association, or corporation;
- (2) The exact location where the school or college is located or proposed to be located;
- (3) Whether or not the school or college is owned or leased and, if leased, the name and residence of the owner or, if a corporation, the directors and stockholders thereof;

(4) A detailed drawing of the premises where the instruction is to take place, including the:

- (A) Size of the building;
- (B) Number of chairs available;
- (C) Sanitary facilities;
- (D) Name, number, and qualifications of the teachers on the staff; and
- (E) Proposed number of students;

(5) A statement, certified to by a public accountant licensed to practice in this state, of the assets and liabilities of the person or firm making the application;

(6) Evidence that a financial responsibility bond for faithful performance of duty has been secured; and

(7) Evidence that a performance bond of ten thousand dollars (\$10,000) guaranteeing the operation of the school or college for one (1) year has been secured.

History. Acts 1961, No. 109, § 3; A.S.A. 1947, § 71-525.

17-20-405. Licensing prerequisites — Managers and teachers.

(a) No school or college of barbering shall be approved by the State Board of Barber Examiners and no license shall be issued to operate or conduct any school or college of barbering until the following provisions are complied with:

(1) The management and faculty are registered barber teachers under this subchapter;

(2) The teacher must be a high school graduate;

(3) The teacher shall have completed a postgraduate course of six hundred (600) hours in barber teacher theory in an approved school, which school shall regularly offer such a course;

(4) At least one (1) approved teacher is teaching therein at all times and in charge of each daily class in theoretical scientific study, scientific barbering practice, and general barbering practice at all times;

(5) One (1) teacher is provided for every twenty (20) students; and

(6)(A) Every teacher shall pay a teacher license fee of forty dollars (\$40.00) per year.

(B) For restoration of an expired license to practice as a teacher, the teacher shall pay a fee of forty-eight dollars (\$48.00).

(b) Section 17-20-404(4)-(6) shall not apply to any school or college of barbering which was engaged in the operation or conduct of any such school or college on June 16, 1961.

(c) Any person who has been continuously licensed or registered in another state to practice barbering who also meets the requirements of subdivisions (a)(2) and (3) of this section may be issued a certificate of registration as a registered barber teacher upon making application as required by law and upon payment of a one hundred fifty dollar

reciprocity fee to obtain registration in this state as a registered barber, plus a one hundred fifty dollar barber teacher reciprocity fee.

History. Acts 1961, No. 109, §§ 5, 8, 12; 527, 71-530, 71-534; Acts 1993, No. 1056, 1975, No. 538, §§ 3, 4; 1981, No. 103, § 2; § 6; 1997, No. 1032, § 1. 1985, No. 137, § 2; A.S.A. 1947, §§ 71-

17-20-406. Manager certification.

Application for examination for a manager certificate shall be filed with the State Board of Barber Examiners on blank forms prepared and furnished by the board and shall be accompanied by the fee prescribed in § 17-20-409.

History. Acts 1961, No. 109, § 1; A.S.A. 1947, § 71-523; Acts 1993, No. 1056, § 10; 1993, No. 1219, § 4.

17-20-407. Curriculum.

(a) No school or college of barbering shall be approved by the State Board of Barber Examiners and no license shall be issued to operate or conduct any school or college of barbering until the applicant demonstrates to the board that it is fully qualified to thoroughly educate and instruct students in all subjects necessary and required to qualify them as competent barbers.

(b) No school of barbering shall be approved by the board unless it:

(1) Requires as a prerequisite to admission thereto graduation from an eighth grade school or possession of an equivalent education to be determined by an examination conducted by the board;

(2)(A) Requires as a prerequisite to graduation a course of instruction and practice of not fewer than five hundred fifty (550) hours for licensed cosmetologists, and for all other students not less than one thousand five hundred (1,500) hours of continuous study and practice of not more than eight (8) hours in any one (1) day, five (5) days a week, within a period of not fewer than nine (9) months from the date of enrollment.

(B) The course of instruction shall include the following subjects:

- (i) Scientific fundamentals for barbering;
- (ii) Physiology;
- (iii) Hygiene;
- (iv) Elementary chemistry relating to sterilization and antiseptics;
- (v) Massaging and manipulating the muscles of the face, neck, and scalp;
- (vi) Hair cutting;
- (vii) Bobbing;
- (viii) Waving;
- (ix) Shaving;
- (x) Beard trimming; and
- (xi) Chemical services.

(c) Each barber college shall:

(1) Conduct a course of study and training which shall consist of not fewer than five hundred fifty (550) hours for students who are licensed cosmetologists, and as to all other students not fewer than one thousand five hundred (1,500) clock hours. The average daily schedule of each student shall consist of the following:

(A) One and one-fourth ($1\frac{1}{4}$) clock hours of theoretical study in a classroom;

(B) One and one-fourth ($1\frac{1}{4}$) clock hours of scientific barber practice in a classroom other than general clinic; and

(C) Five (5) clock hours of general barber practice. Each barber college shall average five and one-half ($5\frac{1}{2}$) haircuts or shaves per day per student;

(2) Teach no fewer than one-third ($\frac{1}{3}$) of its total enrollment scientific barbering practice, theory, or general barber practice at one (1) time;

(3) Submit a daily schedule of its course of study to the board for its approval and post a copy of the approved schedule in its general clinic where it can be easily read by all students; and

(4) Require a maximum attendance in all subjects. No student shall be permitted to spend more than eight (8) hours in the college in any one (1) day.

History. Acts 1961, No. 109, §§ 3, 8, 12;
A.S.A. 1947, §§ 71-525, 71-530, 71-534;
Acts 1989, No. 388, § 11.

17-20-408. Facility — Equipment.

(a)(1) No school or college of barbering shall be approved by the State Board of Barber Examiners and no license shall be issued to operate or conduct any school or college of barbering until one (1) chair is available for each student.

(2) The chairs shall be five feet (5') from center to center.

(b) Each barber college shall have within the premises in which it is located adequate space to accommodate all facilities required by the board. Each barber chair in each college shall be of such construction that it may readily be cleaned, and it shall be mechanically workable and in good working order. Space between barber chairs and space between barber chairs and the work stand or wall shall be adequate so that no student will be hampered in the performance of his or her work. After the adoption of these rules, compliance with the requirements of this subsection shall be subject to the determination of the board and its approval.

(c) Square foot requirements for a barber school or college shall be determined by the board.

(d) The classroom shall be equipped with sufficient seating capacity for all students attending the classroom and shall have the following equipment:

(1) One (1) lavatory with hot and cold running water for every two (2) barber chairs to be approved for scientific practice classes;

(2) One (1) blackboard not less than six feet by three and one-half feet (6' x 3½') in size;

(3) One (1) chart of the skin and hair;

(4) One (1) chart of the muscles of the head, face, and neck;

(5) One (1) chart of the nerves of the head, face, and neck;

(6) One (1) chart of the bones of the head and face;

(7) One (1) chart of the blood supplied to the head and face;

(8) One (1) standard dictionary;

(9) One (1) medical dictionary; and

(10) One (1) microscope for the study of bacteria.

(e) The floor of the practical training room shall be covered with tile or any type of first-grade linoleum and shall have available the following equipment and facilities:

(1) A minimum of fifteen (15) barber chairs in modern and new condition;

(2) One (1) lavatory for each two (2) chairs;

(3) One (1) closed cabinet for tools and linens for each chair;

(4) One (1) approved soiled towel container with hinged lid or door for each chair;

(5) One (1) sterilization solution container for each chair adequate in size to accommodate all instruments to be used on each patron;

(6) One (1) ultraviolet lamp for every twenty (20) students or a fraction thereof;

(7) One (1) infrared generator for every twenty (20) students or a fraction thereof;

(8) One (1) high-frequency unit for every twenty (20) students or a fraction thereof;

(9) One (1) mechanical hand vibrator for every ten (10) students or a fraction thereof;

(10) One (1) hair dryer; and

(11) One (1) time clock.

(f) Each barber college shall have adequate ventilating and lighting equipment approved by the board.

(g) Each barber college having both men and women in its enrollment shall provide one (1) toilet for men and one (1) toilet for women.

History. Acts 1961, No. 109, §§ 5, 11, 12; A.S.A. 1947, §§ 71-527, 71-533, 71-534.

17-20-409. Fees.

(a) No school or college of barbering shall be approved by the State Board of Barber Examiners and no license shall be issued to operate or conduct any school or college of barbering until the applicant pays the initial license fee of five hundred dollars (\$500). Thereafter the school or college shall pay an annual renewal fee of one hundred fifty dollars (\$150).

(b) Other fees applicable to barber schools or colleges are:

- (1) Teacher, manager, or instructor examination \$80.00
- (2) Teacher, manager, or instructor license 40.00
- (3) Restoration of a teacher, manager, or instructor license . 48.00

History. Acts 1961, No. 109, §§ 5, 10; 1985, No. 137, §§ 2, 3; A.S.A. 1947, §§ 71-1975, No. 538, §§ 2-4; 1981, No. 103, § 3; 527, 71-532.

17-20-410. Revocation or suspension of certificate.

The State Board of Barber Examiners may revoke or suspend any certificate of school license or registration upon finding that the school or college fails to comply with the provisions of this subchapter or with the rules and regulations prescribed by the board.

History. Acts 1961, No. 109, § 6; A.S.A. 1947, § 71-528.

17-20-411 — 17-20-419. [Reserved.]

17-20-420. Application for enrollment.

(a) No school of barbering shall enroll or admit any student thereto unless the student makes and files in duplicate a duly verified application. This application shall be of such form and contain such matters as the State Board of Barber Examiners may prescribe and shall be obtained by the student or the school from the board.

(b) One (1) copy of the application shall be retained by the school enrolling or admitting the student, and one (1) copy shall be filed by the school with the board.

History. Acts 1961, No. 109, § 9; A.S.A. 1947, § 71-531.

17-20-421. Applicants for admission or examination — Qualification.

Every applicant for entrance as a student in a barber college or for admittance to examination to receive a certificate of registration as a registered barber shall have a diploma showing completion of the eighth grade or a certification of equivalency issued by the State Board of Barber Examiners in this or any other state or country from which the applicant is applying.

History. Acts 1961, No. 109, § 1; A.S.A. 1947, § 71-523; Acts 1989, No. 388, § 10.

17-20-422. Application for examination.

Each applicant for an examination shall:

(1) Make application to the State Board of Barber Examiners at least ten (10) days prior to examination date on blank forms prepared and

furnished by the board, the application to contain proof under the applicant's oath of the particular qualifications of the applicant;

(2) Furnish to the board a certificate from a practicing medical doctor of this state dated not more than ten (10) days prior to the date of application attesting that he or she is free from any contagious or infectious disease;

(3) Furnish to the board two (2) signed photographs of the applicant, size two inches by three inches (2" x 3"), one (1) to accompany the application and one (1) to be returned to the applicant to be presented to the board when the applicant appears for examination; and

(4) Pay the required fee to the board as provided by law.

History. Acts 1961, No. 109, § 7; A.S.A. 1947, § 71-529.

17-20-423. Sanitary rules and regulations.

Each barber college shall furnish each student upon enrollment a copy of the rules and regulations governing sanitary conditions of barber shops of this state as registered with the Secretary of State.

History. Acts 1961, No. 109, § 12; A.S.A. 1947, § 71-534.

17-20-424. Inspection of student work.

Each barber college shall require that a patron shall not be released from a chair after being served by a student until all the work performed by the student has been thoroughly inspected and approved by a teacher.

History. Acts 1961, No. 109, § 12; A.S.A. 1947, § 71-534.

SUBCHAPTER 5 — BARBER TECHNICIANS

SECTION.

17-20-501. Scope of employment.

17-20-502. Certification.

SECTION.

17-20-503. Certificate authorizing barbershop to employ.

Effective Dates. Acts 1971, No. 541, § 4: Apr. 6, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present laws and regulations requiring the certification of barber technicians and the employment of barber technicians in licensed barber shops located in this state are inadequate and should be revised and clarified immediately in order to protect the public health of the citizens of this

state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 563, § 10: Apr. 2, 1987. Emergency clause provided: "It is hereby found and determined that the provisions of this amendment will promote proper regulation and enforcement of the State

Board of Barber Examiners' laws and that timely approval is necessary to correct an inequitable situation. Therefore, an emergency is hereby declared to exist and this

amendment being necessary for the immediate preservation of the public peace, health and safety shall be in effect from and after its passage and approval."

17-20-501. Scope of employment.

A certified barber technician may be employed in a licensed barber shop and may assist the barber in shampooing and sterilizing so long as the shampooing and sterilizing is done and performed under the direct personal supervision of a licensed barber. The barber technician shall not be permitted to cut or style hair or otherwise engage in the practice of barbering.

History. Acts 1971, No. 541, § 1; A.S.A. 1947, § 71-536.

17-20-502. Certification.

(a) The State Board of Barber Examiners shall issue a barber technician certification to a person who has:

- (1) Completed the twelfth grade of school;
- (2) Completed at least twenty (20) full working days' study at an approved school of barbering, which study shall include subjects designated by the board;
- (3) Completed not fewer than twenty (20) hours' study of sterilization of tools and of the barber laws of the State of Arkansas; and
- (4) Satisfactorily passed an examination prepared by and conducted by the board to determine the applicant's fitness and ability to practice as a barber technician.

(b)(1) Alternatively, the board shall issue a barber technician certification provided the person has:

- (A) Completed the twelfth grade of school;
 - (B) Completed a sixty-day apprenticeship program under the instruction of a licensed barber and designed by the board, which shall include a thorough study of sterilization of tools and of the barber laws of the State of Arkansas; and
 - (C) Satisfactorily passed an examination prepared and conducted by the board to determine the applicant's fitness and ability to practice as a barber technician.
- (2) Any person participating in the aforementioned apprenticeship program shall be allowed to take the examination prepared by the board only upon certification by the instructing barber that the person has completed the course as designed by the board.

History. Acts 1971, No. 541, § 2; 1975, No. 656, § 1; A.S.A. 1947, § 71-537.

17-20-503. Certificate authorizing barbershop to employ.

Upon application of a licensed barbershop and upon receipt of the application fee of thirty-five dollars (\$35.00), the State Board of Barber Examiners shall issue a certificate authorizing the licensed barbershop to employ not more than two (2) persons as barber technicians. Persons so employed must have completed the eighth grade of school and be registered with the board.

History. Acts 1987, No. 563, § 7.

A.C.R.C. Notes. Acts 1987, No. 563, § 1, provided: "Definitions. As used in this Act:

"(A) 'Administrative Procedure Act' means Act 434 of 1967 as it now exists or is hereafter amended (Ark. Stat. Ann. § 5-701 et seq. [§ 25-15-201 et seq.]).

"(B) 'Arkansas Barber Law' means Act 313 of 1937 as it now exists or is hereafter

amended (Ark. Stat. Ann. §§ 71-501 through 71-536 [§§ 17-20-101 — 17-20-310]).

"(C) 'Board' means the State Board of Barber Examiners created by section 15 of Act 313 of 1937 (Ark. Stat. Ann. § 71-515 [§ 17-20-201])."

CHAPTER 21

BEAUTY PAGEANTS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. REGISTRATION.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-49-101 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-21-101. Definitions.
17-21-102. Penalties.

SECTION.

- 17-21-103. Rules and regulations.
17-21-104. Exemptions.

17-21-101. Definitions.

As used in this chapter, unless the context otherwise requires:

(1)(A) "Beauty pageant" means any contest or competition in which entrants are judged on the basis of physical beauty, skill, talent, poise, and personality and in which a winner or winners, are selected as representing an ideal in one (1) or more of these areas.

(B) "Beauty pageant" as defined herein, shall not include any such contest or competition in which no application fee or entrance charge is made for contestants, to which no admission charge is made for attendance, and in connection with which no tickets or chances are sold;

(2) “Bond” means a surety bond with power of attorney attached and which names the Arkansas resident agent for the surety company;

(3) “Director” means the Director of the Department of Finance and Administration;

(4) “Entrant’s fee” means any payment of money or other thing of value, including, but not limited to, the selling of advertisements or tickets, or the obtaining of sponsors, which activity is a precondition to participation in a beauty pageant; and

(5) “Operator” means any person, franchisee, firm or corporation, civic group, or elementary or secondary educational institution that promotes, organizes or otherwise operates, a beauty pageant, participation in which is limited to persons paying an entrant’s fee.

History. Acts 1991, No. 101, § 1.

17-21-102. Penalties.

Violation of this chapter shall constitute a misdemeanor punishable by a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000).

History. Acts 1991, No. 101, § 6.

17-21-103. Rules and regulations.

The Director of the Department of Finance and Administration may adopt rules and regulations to administer the provisions of this chapter. Such rules and regulations shall be adopted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1991, No. 101, § 4.

17-21-104. Exemptions.

The provisions of this chapter shall not apply to any operator which has existed as an operation for at least twenty-five (25) years, and its affiliates, whether now or hereafter, and whose continuing primary function involves the annual organization, promotion, and sponsoring of a statewide talent and beauty pageant in which contestants compete for scholarships, awarded by the operator, as well as for the opportunity of being Arkansas’ representative and contestant in an annual nationwide talent and beauty pageant with which the operator is affiliated.

History. Acts 1991, No. 101, § 5; 1991, No. 676, § 1.

SUBCHAPTER 2 — REGISTRATION

SECTION.	SECTION.
17-21-201. Registration of operators — Renewal — Fee.	17-21-203. Exemptions from certain re- quirements.
17-21-202. Bond.	17-21-204. Cancellations — Refunds.

SECTION.

17-21-205. Denial, suspension, revocation of registration.

17-21-201. Registration of operators — Renewal — Fee.

(a) No person shall conduct a beauty pageant in Arkansas unless registered with the Director of the Department of Finance and Administration on forms prescribed by him or her. Registration in another state as a beauty pageant operator shall not be effective in this state.

(b) The registration form shall contain, but shall not be limited to, the following information:

(1) Name, address, and telephone number of the operator;

(2) Name, address, and telephone number of the individual or officer of the organization having full responsibility for the conducting of the pageant;

(3) Names of pageants customarily promoted by the operator; and

(4) Name, address, and telephone number of the financial institution in which the entrant's fee is held.

(c)(1) In order to continue to hold a valid registration in a subsequent year, each operator shall annually renew his or her registration.

(2) Each registration shall expire on December 31 of each year.

History. Acts 1991, No. 101, § 2; 1993, No. 344, §§ 3, 4.

17-21-202. Bond.

(a) Except as provided in § 17-21-203, each operator shall, at the time of registration, file and have approved by the Director of the Department of Finance and Administration, a bond in which the candidate for registration shall be the principal obligor in the sum of ten thousand dollars (\$10,000).

(b) The bond shall be payable to the State of Arkansas for the use of the director and any person who may have a cause of action against the obligor of the bond for any losses caused by a failure to conduct a beauty pageant.

History. Acts 1991, No. 101, § 2.

17-21-203. Exemptions from certain requirements.

A bona fide civic club in existence for at least one (1) year, a nonprofit organization, a religious organization or church, a local government entity or school, or any organization auxiliary to or affiliated with such local governmental entities or schools, including, but not limited to, county fair boards and school booster clubs, shall be exempt from the requirements of §§ 17-21-201(c) and 17-21-202.

History. Acts 1991, No. 101, § 2; 1993, No. 344, § 5.

17-21-204. Cancellations — Refunds.

- (a) If a beauty pageant is cancelled or otherwise does not take place, all entrants’ fees shall be refunded by the operator.
- (b) The surety shall be liable for any unrefunded entrants’ fees in the case of a default by the operator.

History. Acts 1991, No. 101, § 3.

17-21-205. Denial, suspension, revocation of registration.

- The Director of the Department of Finance and Administration may deny, suspend, or revoke a registration for:
- (1) A violation of any of the provisions of this chapter; or
 - (2) The making of a false statement on the registration application form.

History. Acts 1991, No. 101, § 4.

CHAPTER 22
BOXING, WRESTLING, ETC.

- SUBCHAPTER.
- 1. GENERAL PROVISIONS.
 - 2. STATE ATHLETIC COMMISSION.
 - 3. LICENSING.

Publisher’s Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-19-101 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

- SECTION.
- 17-22-101. Definitions.

Effective Dates. Acts 1999, No. 1085, § 13: Apr. 5, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that this act is necessary to continue a tradition of permitting nonprofit corporations to utilize athletic events as fund raisers; that this act is necessary to ensure the safety of participants in martial arts competitions, an area currently unregulated by state law; that additional funding mechanisms contained in this bill

are necessary to provide increased oversight and regulation of matches and exhibitions to ensure the safety of the participants; and that the public health, welfare and safety are dependent upon the immediate enactment of this act upon its passage. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved

nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by

the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-22-101. Definitions.

For purposes of this chapter:

(1) "Amateur" means a person who has never received nor competed for any purse or other compensation in an amount that exceeds the sum established by the State Athletic Commission in its rules for:

(A) Expenses of training; or

(B) Participating in a combative sports contest or exhibition;

(2) "Boxing" means to compete with the fists;

(3)(A) "Combative sports" means boxing, kickboxing, wrestling, martial arts, or any combination thereof, or any form of competition in which a blow is struck which may reasonably be expected to inflict injury.

(B) "Combative sports" does not include student training or an exhibition of a student's skill when:

(i) Conducted by a martial arts school or an association of martial arts schools;

(ii) The student's participation is for health and recreational purposes rather than competition; and

(iii) The intent is to use only partial contact;

(4) "Commission" means the State Athletic Commission as provided in § 17-22-201;

(5) "Exhibition" means any engagement in which the participants show or display their skills without necessarily striving to win;

(6) "Kick boxing" means any form of boxing in which blows are delivered with the hand and any part of the leg below the hip, including the foot;

(7) "Manager" means any person who directly or indirectly controls or administers the combative sports affairs of any professional participant of the same;

(8) "Martial arts" or "mixed martial arts" means any discipline in which the participants utilize kicks, punches, blows, strikes, or other techniques, including without limitation any form of judo, kung fu, karate, and tae kwon do, ju jitsu, or any combination thereof;

(9) "Match" means any engagement in which the participants show or display their skills while striving in good faith to win;

(10) "Person" means any individual, partnership, corporation, association, or club;

(11) "Professional" means an individual who is eighteen (18) years of age or older and who, as a means of obtaining pecuniary gain:

(A) Competes for money, prizes, or purses in combative sports contests or exhibitions; or

- (B) Teaches, instructs, or assists in the practice of professional combative sports;
- (12) “Promoter” means any person, club, organization, corporation, or association, and in the case of a corporate promoter includes any officer, director, employee, or stockholder thereof who produces, arranges, or stages any professional boxing, kick boxing, wrestling, or martial arts match or exhibition; and
- (13) “Wrestling” means any form of combat between two (2) or more participants in which a participant delivers blows to his or her opponent’s body, executes throws to his or her opponent’s body, or applies holds to his or her opponent’s body.

History. Acts 1999, No. 1085, § 1; 2009, No. 781, § 1.

Amendments. The 2009 amendment rewrote (1); inserted (3) and (13), deleted (12) and former (13), and redesignated the remaining subdivisions accordingly; sub-

stituted “combative sports” for “wrestling, boxing, kick boxing, or martial arts” in (7); inserted “or ‘mixed martial arts’” and “ju jitsu” in (8); rewrote (11); and made related and minor stylistic changes.

SUBCHAPTER 2 — STATE ATHLETIC COMMISSION

- SECTION.
- 17-22-201. Creation — Members.
- 17-22-202. Chair.
- 17-22-203. Secretary.
- 17-22-204. Authority.
- 17-22-205. Personal liability.

- SECTION.
- 17-22-206. Combative sports.
- 17-22-207. Civil penalties.
- 17-22-208. Combative sports elimination contests.

A.C.R.C. Notes. Acts 2007, No. 324, § 3, provided: “Three percent (3%) of the total gross receipts received by the State Athletic Commission from admission charges from matches, exhibitions and any other athletic event which the State Athletic Commission has jurisdiction over shall be used for Grants to the thirty-four (34) Boys and Girls Club Organizations within the State of Arkansas and one percent (1%) shall be used for Grants to the non-profit Amateur Boxing Clubs of the State of Arkansas who qualify. The State Athletic Commission shall distribute these Grants in equal amounts to all thirty-four (34) Boys and Girls Club Organizations, at the end of each six (6) month period, provided there are sufficient funds to distribute a minimum of one hundred dollars (\$100.00) to each entity, beginning upon the effective date of this act and ending on June 30, 2009. Distribution of funds will be contingent upon available appropriation and funding.”

Effective Dates. Acts 1927, No. 131,

§ 9: approved Mar. 9, 1927. Emergency clause provided: “This act being necessary for the immediate preservation of the public peace, health and safety, of the State of Arkansas, shall be in force and effect from and after its passage.”

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governer [sic], it shall

become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1999, No. 1085, § 13: Apr. 5, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that this act is necessary to continue a tradition of permitting nonprofit corporations to utilize athletic events as fund raisers; that this act is necessary to ensure the safety of participants in martial arts competitions, an area currently unregulated by state law; that additional funding mechanisms contained in this bill are necessary to provide increased oversight and regula-

tion of matches and exhibitions to ensure the safety of the participants; and that the public health, welfare and safety are dependent upon the immediate enactment of this act upon its passage. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

17-22-201. Creation — Members.

(a) A State Athletic Commission is created, which shall consist of seven (7) members who shall be at least twenty-five (25) years of age.

(b)(1) Members shall be appointed by the Governor for a term of two (2) years.

(2) Two (2) of the members of the commission shall be members of the state executive committees of any patriotic organizations chartered by authority of a special act of the Congress of the United States.

(3) One (1) member shall be a representative of the field of physical education.

(4) One (1) member shall be a representative of the field of sports promotion.

(5) One (1) member shall be a consumer representative.

(6) The remaining two (2) members may be citizens at large but shall have experience with combative sports.

(7)(A) Furthermore, one (1) of the seven (7) members of the commission shall be a member of a minority race.

(B) One (1) of the seven (7) members shall be a senior citizen.

(C) Four (4) of the seven (7) members shall have experience with combative sports.

(c) The members of the commission shall serve without pay.

(d) The members of the commission shall have authority to promulgate such rules and regulations as are necessary for the operation and enforcement of this chapter and not in conflict with this chapter.

(e) The members of the commission may receive expense reimbursement in accordance with § 25-16-901 et seq.

(f) When any member of the commission shall cease to be a member of the state executive committee of any such patriotic organization as herein mentioned, his or her commission as a member of the commis-

sion shall automatically expire. The Governor shall appoint a successor, whose qualifications shall be as prescribed in this section.

History. Acts 1927, No. 131, §§ 2, 3; Pope's Dig., § 12062; Acts 1985, No. 970, § 2; A.S.A. 1947, §§ 84-2903, 84-2904; Acts 1991, No. 1188, § 1; 1997, No. 250, § 130; 2009, No. 781, § 2.

Amendments. The 2009 amendment

substituted "Two (2)" for "Four (4)" in (b)(2), inserted (b)(6) and present (7)(C) and redesignated the remaining subdivisions accordingly, and made related changes.

17-22-202. Chair.

The State Athletic Commission shall elect one (1) of its members as chair.

History. Acts 1927, No. 131, § 3; Pope's Dig., § 12063; A.S.A. 1947, § 84-2904.

17-22-203. Secretary.

(a) The State Athletic Commission shall have authority to select a secretary and fix the salary thereof at a sum not to exceed the maximum annual salary prescribed for such a position in the biennial appropriation for the commission.

(b) The secretary shall:

(1) Keep in the office of the commission a full, complete, and up-to-date record of all the proceedings of the commission;

(2) Keep an up-to-date account of all money received by him or her on behalf of the commission; and

(3) Perform such other duties as shall be prescribed by the commission.

History. Acts 1927, No. 131, §§ 3, 5; No. 970, § 2; A.S.A. 1947, §§ 84-2904, Pope's Dig., §§ 12063, 12065; Acts 1985, 84-2906.

17-22-204. Authority.

(a)(1) The State Athletic Commission shall have the sole discretion, management, control, and jurisdiction over all combative sports matches and exhibitions in this state.

(2) Combative sports matches and exhibitions declaring themselves amateur are governed by the commission unless sanctioned by a body approved in writing by the commission, including without limitation:

(A) A federally recognized sanctioning body; or

(B) A national oversight body with 501(c)(3) status under the Internal Revenue Code operating in at least six (6) states.

(b) The commission shall have the authority to appoint inspectors and other officials necessary to properly conduct any match or exhibition authorized by this chapter.

(c) The commission shall have the authority to adopt and promulgate, amend, or abrogate any and all rules and regulations considered by it necessary or expedient for the performance of its functions as

provided in this chapter and in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d) The commission may issue subpoenas, examine witnesses, and administer oaths and shall, at its discretion, investigate allegations or practices violating the provisions of this chapter.

(e) The commission shall have the authority to hire an investigator for the purposes outlined in this section.

(f) The commission shall have the authority to require insurance for combative sports with limits to be adjusted by the rules and regulations of the commission.

(g) The commission shall have the authority to make a claim on the bond or check posted by a promoter for combative sports events in order to make reimbursements for any unpaid fees, prize money, or other financial commitments of the promoter related to combative sports activity licensed by the commission.

History. Acts 1927, No. 131, § 3; Pope's Dig., § 12063; Acts 1985, No. 970, § 2; A.S.A. 1947, § 84-2904; Acts 1993, No. 1277, § 1; 1999, No. 1085, § 2; 2009, No. 781, § 3.

Amendments. The 2009 amendment, in (a), inserted (a)(2), redesignated the

remaining text accordingly, and in (a)(1), substituted "combative sports" for "professional or semiprofessional" and deleted "involving boxing, kick boxing, wrestling, or martial arts" following "exhibitions"; and added (f) and (g).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Professions, Occupations, and

Businesses, 24 U. Ark. Little Rock L. Rev. 535.

17-22-205. Personal liability.

The members of the State Athletic Commission and employees of the commission shall not be personally liable for acts performed in carrying out their official duties except in the case of gross misconduct, and no legal action shall be maintained against any member or employee of the commission for such acts except in the case of gross misconduct.

History. Acts 1985, No. 970, § 5; A.S.A. 1947, § 84-2913.

17-22-206. Combative sports.

The General Assembly finds and declares to be the public policy of this state that it is in the best interest of the public and combative sports that combative sports be subject to an effective and efficient system of strict control and regulation in order to protect the safety and well-being of the participants in combative sports matches and exhibitions and to promote the public confidence in the regulatory process and the conduct of combative sports matches and exhibitions. To further such public confidence and trust, the State Athletic Commission shall

have the authority to adopt and promulgate, amend, or abrogate any and all rules and regulations concerning combative sports.

History. Acts 1999, No. 1085, § 3; 2009, No. 781, § 4.

Amendments. The 2009 amendment rewrote the section heading and substituted the first instance of “combative

sports” for “the martial arts,” and substituted the remaining instances of “combative sports” for “professional or semi-professional martial arts.”

17-22-207. Civil penalties.

(a) Any person who, after notice and hearing, is found by the State Athletic Commission to have violated any provision of this chapter or any rules or regulations of the commission may be assessed a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation.

(b) The penalty provided for in this section plus interest at ten percent (10%) per annum shall be paid to the commission before the penalized person can be issued a license by the commission.

(c) The commission shall have the authority to file suit in the Pulaski County Circuit Court or the circuit court of the county in which the person resides to obtain a judgment for the amount of any penalty not paid within thirty (30) days of service on the person of the order assessing the penalty, unless the circuit court enters a stay pursuant to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1999, No. 1085, § 3; 2009, No. 781, § 5.

substituted “two thousand five hundred dollars (\$2,500)” for “one thousand dollars (\$1,000)” in (a).

Amendments. The 2009 amendment

17-22-208. Combative sports elimination contests.

(a) This chapter applies to combative sports elimination contests in which:

(1) The contestants compete for prizes only in combative sports elimination contests and are not:

(A) Professional boxers licensed through the Professional Boxing and Safety Act of 1996, 15 U.S.C. § 6301 et seq., competing in four (4) or more rounds of non-elimination boxing; or

(B) Professional mixed martial arts combatants;

(2) Each bout is scheduled to consist of three (3) or fewer one-minute rounds with combative sports elimination contests conducted on no more than two (2) consecutive calendar days;

(3) Contestants are prohibited from competing for more than twelve (12) minutes on each combative sports elimination contest day;

(4) The contestants participating in the combative sports elimination contest are to be insured by the promoter for not less than five thousand dollars (\$5,000) for medical and hospital expenses to be paid to the contestants to cover injuries sustained in the combative sports elimination contest and for not less than five thousand dollars (\$5,000) to be

paid in accordance with the statutes of descent and distribution of personal property if a contestant dies as a result of injuries sustained in the combative sports elimination contest;

(5) A licensed physician is in attendance at ringside, and the physician has authority to stop the combative sports elimination contest for medical reasons;

(6) All contestants pass a physical examination given by a licensed physician before the combative sports elimination contest;

(7) A preliminary breath test is administered to each contestant that indicates a blood alcohol content of two-tenths of one percent (0.2%) or less; and

(8) The promoter conducts the combative sports elimination contest in compliance with the following:

(A) A contestant who has lost by a technical knockout is not permitted to compete again for a period of thirty (30) calendar days or until the contestant has submitted to the promoter the results of a physical examination equivalent to that required of professional boxers or professional mixed martial arts combatants;

(B)(i) The ringside physician examines a contestant who has been knocked out in a combative sports elimination contest or whose fight has been stopped by the referee because the contestant received hard blows to the head that made the contestant defenseless or incapable of continuing immediately after the knockout or stoppage.

(ii) The ringside physician may recommend post-fight neurological examinations, which may include computerized axial tomography scans or magnetic resonance imaging, to be performed on the contestant immediately after the contestant leaves the location of the combative sports elimination contest.

(iii) The promoter shall not permit the contestant to compete until a physician has certified that the contestant is fit to compete.

(iv) If the physician recommends further neurological examinations, the promoter shall not permit the contestant to compete until the promoter receives copies of examination reports demonstrating that the contestant is fit to compete;

(C)(i) The promoter shall require that a contestant who has sustained a severe injury or knockout in a combative sports elimination contest be examined by a physician.

(ii) The promoter shall not permit the contestant to compete until the physician has certified that the contestant has fully recovered;

(D) The promoter shall not permit a contestant to compete in a combative sports elimination contest for a period of not less than sixty (60) days if the contestant has been knocked out or has received excessive hard blows to the head that required the fight to be stopped;

(E) A contestant who has been knocked out twice in a period of three (3) months or who has had excessive head blows causing a fight to be stopped shall not be permitted by a promoter to participate in a combative sports elimination contest for a period of not less than one hundred twenty (120) days after the second knockout or stoppage;

- (F) A contestant who has been knocked out or had excessive hard blows to the head causing a fight to be stopped three (3) times consecutively in a period of twelve (12) months shall not be permitted by a promoter to participate in a combative sports elimination contest for a period of one (1) year after the third knockout; and
- (G) Before resuming competition after any of the periods of rest prescribed in subdivisions (a)(8)(D) — (F) of this section, a promoter shall require the contestant to produce a certification by a physician stating that the contestant is fit to take part in a combative sports elimination contest.
- (b) As part of the physical examination given before the combative sports elimination contest, the licensed physician or other trained person shall administer a preliminary breath test in compliance with standards imposed in rules promulgated by the Department of Arkansas State Police regarding equipment calibration and methods of administration.
- (c)(1) The promoter shall keep a log of preliminary breath test results of contestants on file at its place of business for at least three (3) years after the date of administration of the test.
- (2) These results shall be made available to law enforcement officials upon request.
- (d) A combative sports elimination contest held under subsection (a) of this section is not considered to be in violation of the law.
- (e) Any person violating the provisions of this section shall be guilty of a Class A misdemeanor and shall be subject to a fine not to exceed one thousand dollars (\$1,000).

History. Acts 2001, No. 631, § 1; 2009, No. 781, § 6.

Amendments. The 2009 amendment substituted “combative sports elimination contest” for “elimination contest” or “contest” or variant throughout the section; in (a), substituted “applies” for “does not apply” and “combative sports” for “boxing”

in the introductory language, rewrote (a)(1), substituted “competing” for “boxing” in (a)(3), substituted “five thousand dollars (\$5,000)” for “one thousand dollars (\$1,000)” in (a)(4), and inserted “or professional mixed martial arts combatants” in (a)(8)(A); and made related and minor stylistic changes.

SUBCHAPTER 3 — LICENSING

SECTION.	SECTION.
17-22-301. Authorized matches and exhibitions.	17-22-304. Bond required.
17-22-302. Issuance of licenses — Fees.	17-22-305. Refusal or revocation of license.
17-22-303. License required — Penalty for unlicensed activity.	17-22-306. Fees.

Publisher’s Notes. Acts 1987, No. 659, § 1, provided: “It is the purpose and intent of this Act to assure that each and every qualified organization and civic club in the State desiring to be licensed to

sponsor athletic events, matches and exhibitions regulated by the Arkansas Athletic Commission shall be licensed by the Commission to do so and the Commission shall have no authority to limit or restrict

the number of licensed sponsors. It is further the intent hereof to provide that the Secretary of State shall, upon application therefor, be licensed as a sponsor of such athletic events, matches and exhibitions in any city, town or area of the State wherein no qualified organization or club has applied for a license as a sponsor, and that the funds received by the Secretary of State as a sponsor of such events shall be used for the erection and maintenance of a memorial to Arkansas law enforcement officers or such other memorial as the General Assembly may hereafter provide."

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Effective Dates. Acts 1927, No. 131, § 9: approved Mar. 9, 1927. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety, of the State of Arkansas, shall be in force and effect from and after its passage."

Acts 1929, No. 27, § 2: approved Feb. 19, 1929. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety of the State of Arkansas, it shall be in force and effect from and after its passage."

Acts 1989, No. 596, § 5: Mar. 15, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that this law is necessary to continue a tradition that until recently permitted nonprofit corporations to utilize athletic events as fund raisers; that the

public health, welfare and safety is dependent upon the immediate enactment of this bill upon its passage. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1999, No. 1085, § 13: Apr. 5, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that this act is necessary to continue a tradition of permitting nonprofit corporations to utilize athletic events as fund raisers; that this act is necessary to ensure the safety of participants in martial arts competitions, an area currently unregulated by state law; that additional funding mechanisms contained in this bill are necessary to provide increased oversight and regulation of matches and exhibitions to ensure the safety of the participants; and that the public health, welfare and safety are dependent upon the immediate enactment of this act upon its passage. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

Am. Jur. 4 Am. Jur. 2d, Amuse, §§ 30, 34. **C.J.S.** 86 C.J.S., Theat. & S., §§ 21, 25.

17-22-301. Authorized matches and exhibitions.

(a) All combative sports matches or exhibitions in this state are subject to the requirements of this chapter and the rules and regulations of the State Athletic Commission unless exempted by § 17-22-204(a) or § 17-22-101(3)(B).

(b) All matches or exhibitions as provided in subsection (a) of this section shall be conducted only in accordance with the provisions of this

chapter and acts amendatory or supplemental hereto and in accordance with the rules and regulations of the commission.

History. Acts 1927, No. 131, § 1; Pope's Dig., § 12061; Acts 1965, No. 463, § 1; 1985, No. 970, §§ 1, 4; A.S.A. 1947, §§ 84-2902, 84-2911; Acts 1987, No. 659, §§ 2, 4; 1989, No. 596, § 1; 1999, No. 1085, § 4; 2009, No. 781, § 7.

Amendments. The 2009 amendment rewrote (a); made a minor stylistic change in (b); and deleted (c) through (e).

17-22-302. Issuance of licenses — Fees.

(a) The State Athletic Commission shall have the authority to appoint and issue annual licenses to the following persons with regard to participation in combative sports in this state:

- (1) A person engaging in combative sports;
- (2) A promoter of a combative sports match or exhibition;
- (3) A manager;
- (4) A matchmaker;
- (5) A referee;
- (6) A judge;
- (7) A physician;
- (8) A timekeeper; and
- (9) A person arranging, participating in, or otherwise involved with matches and exhibitions as provided in § 17-22-301(a).

(b) The commission shall have the authority to refuse to issue a license to any person or organization that has been sanctioned in any way by any comparable licensing body of another state.

(c) Fees for the licenses shall be established by the commission.

(d) All licenses as provided in this section shall expire annually on June 30.

History. Acts 1927, No. 131, § 4; 1929, No. 27, § 1; Pope's Dig., § 12064; Acts 1965, No. 463, § 2; 1985, No. 970, § 3; A.S.A. 1947, §§ 84-2905, 84-2912; Acts 1987, No. 659, § 3; 1989, No. 596, § 2; 1993, No. 1277, § 2; 1999, No. 1085, § 5; 2009, No. 781, § 7.

Amendments. The 2009 amendment rewrote (a) through (c) and redesignated them as (a); made a minor stylistic change in present (b); deleted (d); and redesignated the subsequent subdivisions accordingly.

17-22-303. License required — Penalty for unlicensed activity.

(a) No person shall participate in or engage in the promotion of a combative sports match or exhibition in this state without first having obtained a license from the State Athletic Commission.

(b) No person shall participate in a combative sports match or exhibition as a manager, matchmaker, referee, judge, physician, or timekeeper, without first having obtained a license from the commission.

(c) Any person mentioned in subsection (a) or (b) of this section who does not first obtain a license from the commission before participating in a combative sports match or exhibition shall be deemed guilty of a

misdemeanor and upon conviction shall be fined in any sum not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500).

(d) A venue, entity, or person who knowingly assists in making an unlicensed combative sports match or exhibition occur shall be subject to the penalties under subsection (c) of this section.

History. Acts 1927, No. 131, § 8; 1929, No. 27, § 1; Pope's Dig., § 12068; A.S.A. 1947, §§ 84-2901, 84-2909; Acts 1993, No. 1277, § 3; 1999, No. 1085, § 6; 2009, No. 781, § 7.

Amendments. The 2009 amendment

substituted "combative sports" for "professional or semi-professional wrestling, boxing, kick boxing, or martial arts" in (a) and (b); deleted (c) and redesignated the subsequent subsection accordingly; and added (d).

17-22-304. Bond required.

As a condition to the issuance of a license as provided in § 17-22-302(a)(2), the person applying for the license shall file with the State Athletic Commission a cashier's check, a letter of credit, or a corporate surety bond in an amount to be established by the commission in its rules, but not less than the sum of one thousand dollars (\$1,000) written by a corporate surety authorized to do business in this state, conditioned upon the licensee's payment of all taxes and other charges due the state and its political subdivisions on account of such matches or exhibitions.

History. Acts 1961, No. 450, § 1; A.S.A. 1947, § 84-2910; Acts 1999, No. 1085, § 7; 2009, No. 781, § 7.

Amendments. The 2009 amendment deleted (b) and redesignated the remaining subsection accordingly; substituted "§

17-22-301(a)(2)" for "§ 17-22-301(c)"; inserted "an amount to be established by the commission in its rules, but not less than"; and deleted "as provided in § 17-22-301(a)" following "exhibitions."

17-22-305. Refusal or revocation of license.

(a) The State Athletic Commission may refuse for good cause to issue a license under § 17-22-302(a).

(b) The commission may also revoke for good cause any license granted under authority of this chapter.

History. Acts 1927, No. 131, § 7; Pope's Dig., § 12067; A.S.A. 1947, § 84-2908; Acts 1993, No. 1277, § 4; 1999, No. 1085, § 8; 2009, No. 781, § 7.

Publisher's Notes. This section may

be affected by the Administrative Procedure Act, § 25-15-201 et seq.

Amendments. The 2009 amendment rewrote the section.

17-22-306. Fees.

(a)(1) Within five (5) business days after a combative sports match or exhibition, the licensed manager, promoter, or person responsible for the match or exhibition shall furnish to the State Athletic Commission a written report under the penalty of perjury on a form that shall be provided by the commission showing the number of tickets that were

issued or sold and the gross receipts therefor without any deductions whatsoever.

(2)(A) The person shall also pay to the commission at the same time a five percent (5%) fee of the total gross receipts received from admission charges for each exhibition held under the authority of this chapter.

(B) The five percent (5%) shall be computed using gross gate receipts, unless the venue collects and remits sales tax for the promoter.

(C) If the venue collects and remits sales tax for the promoter, the five percent (5%) shall be computed on the net gate receipts after sales tax.

(b)(1) The commission may designate a representative to be present and to observe the computation of the number of tickets issued or sold and the determination of the gross receipts.

(2)(A) When the tickets are sold through an electronic ticket system, the commission may accept a computerized certification of tickets sold and a statement from the venue.

(B) The statement from the venue shall be signed by an arena representative and the promoter.

History. Acts 1987, No. 659, § 5; 1999, No. 1085, § 9; 2001, No. 536, § 1; 2009, No. 781, § 7.

Amendments. The 2009 amendment inserted (a)(2)(B), (a)(2)(C), and (b)(2), and redesignated the remaining subdivisions accordingly; in (a), substituted “five (5) business days after a combative sports match or exhibition, the licensed man-

ager, promoter, or person responsible for the match or exhibition” for “ten (10) days after a match or exhibition as provided in § 17-22-301(a), every sponsoring organization as provided in § 17-22-301(c)” in (a)(1), and in (a)(2), deleted “exclusive of federal taxes thereon” following “(5%)” and deleted “main or principal” preceding “exhibition.”

CHAPTER 23

BUYERS OF PRECIOUS METALS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. LICENSING.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-20-101 et seq.

Effective Dates. Acts 1981, No. 87, § 11: Feb. 17, 1981. Emergency clause provided: “It is hereby found and determined by the General Assembly that due to the tremendous increase in the price per ounce of precious metals many citizens are experiencing residential burglar-

ies of precious metals, which are subsequently sold to unlicensed dealers where no records are maintained which would identify the property and the individuals selling such property. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

CASE NOTES

Cited: King v. Younts, 278 Ark. 91, 643 S.W.2d 542 (1982).

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

17-23-101. Definitions.

17-23-102. Exemptions.

SECTION.

17-23-103. Penalties.

17-23-104. Civil liability.

Cross References. Scrap metal dealers, § 17-44-101 et seq.

Effective Dates. Acts 1981, No. 541, § 5: Mar. 18, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of Acts 1981, No. 87 relating to the licensure and regulation of precious metal buyers are unduly restrictive and seriously hamper the operation of any legiti-

mate businesses in the state and that this act is designed to correct this undesirable and inequitable situation and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

17-23-101. Definitions.

As used in this chapter, unless the context otherwise requires:

- (1) "Person" means any individual, partnership, corporation, association, or other business entity; and
- (2) "Silver" means sterling silver.

History. Acts 1981, No. 87, § 1; 1981, No. 541, § 1; A.S.A. 1947, § 71-5401.

17-23-102. Exemptions.

The provisions of this chapter shall not apply to the following:

- (1) Transactions involving the sale or transfer of precious metals from one (1) retail jeweler or licensed dealer under this chapter to another retail jeweler or licensed dealer under this chapter;
- (2) Transactions involving the sale or transfer of precious metals by a wholesale jeweler to a retail jeweler or licensed dealer;
- (3) Transactions involving the acquisition of precious metals as a trade-in on any item where the amount allowed as trade-in for the precious metal is less than fifty percent (50%) of the purchase price of the item purchased;
- (4) Transactions involving coins regardless of whether or not such coins contain precious metals;

(5) Any financial institution, which is covered by federal or state deposit insurance, or any person doing business under the laws of this state;

(6) Any person doing business under the laws of this state or the United States relating to any broker-dealer, or commodity futures commission merchant, or commodity trading advisor or agent duly registered and regulated by the State Securities Department or the United States Commodity Futures Trading Commission; or

(7) Pawn brokers.

History. Acts 1981, No. 87, § 1; 1981, No. 541, § 1; A.S.A. 1947, § 71-5401; Acts 1991, No. 729, § 1.

17-23-103. Penalties.

(a) Every person who shall violate the provisions of this chapter and be found guilty shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than one (1) year, or both.

(b) If the value of the property involved in a transaction which is in violation of this chapter exceeds five hundred dollars (\$500), a person convicted of a violation shall be fined not more than two thousand dollars (\$2,000) or imprisoned for not more than three (3) years, or both.

History. Acts 1981, No. 87, § 7; A.S.A. 1947, § 71-5407.

17-23-104. Civil liability.

(a) Any person who has been damaged or injured by the failure of a person required to be licensed under this chapter to comply with the provisions of this chapter may recover the actual damages sustained.

(b) The court in its discretion may also award punitive damages and the cost of suit and reasonable attorney's fees to a prevailing plaintiff.

History. Acts 1981, No. 87, § 6; A.S.A. 1947, § 71-5406.

SUBCHAPTER 2 — LICENSING

- SECTION.
17-23-201. License required.
17-23-202. Application — Bond — Fee —
 Waiting period — Rules
 and regulations.
17-23-203. Seller identification.

- SECTION.
17-23-204. Melt-down bullion.
17-23-205. Disclosures.
17-23-206. Records.
17-23-207. Holding periods.
17-23-208. Disposition of funds.

Effective Dates. Acts 1981, No. 541, § 5; Mar. 18, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provi-

sions of Acts 1981, No. 87 relating to the licensure and regulation of precious metal buyers are unduly restrictive and seriously hamper the operation of any legiti-

mate businesses in the state and that this act is designed to correct this undesirable and inequitable situation and should be given effect immediately. Therefore, an emergency is hereby declared to exist and

this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

17-23-201. License required.

No person shall engage in the business of buying gold, silver, platinum group metals, or any article containing them, hereinafter referred to as “precious metals”, from the general public for the purpose of reselling the metals in any condition without first obtaining a license from the Department of Arkansas State Police as provided for in this subchapter.

History. Acts 1981, No. 87, § 1; 1981, No. 541, § 1; A.S.A. 1947, § 71-5401; Acts 1991, No. 729, § 2.

17-23-202. Application — Bond — Fee — Waiting period — Rules and regulations.

(a) Applications for license shall be in writing, under oath, and in the form prescribed by the Department of Arkansas State Police. They shall contain:

(1) The name and the address, both of the residence and place of business of the applicant, and if the applicant is a co-partnership or association, of every member thereof, and if a corporation, of each officer and director and of the principal owner or owners of the issued and outstanding capital stock thereof; and

(2) The city or town with the street and number, if any, where the business is to be conducted and, if a nonresident, of the principal place of business without the state and such further information as the department may require.

(b) If the applicant does not have a permanent business address in the state, evidenced by a lease or rental agreement or proof of ownership of the business, the applicant, as a condition of obtaining a license, shall furnish a surety bond issued by a surety company authorized to do business in Arkansas in a minimum amount of one hundred thousand dollars (\$100,000) in favor of the State of Arkansas. The proceeds of the bond shall be available to assure compliance with all provisions of this chapter, and the payment of any and all taxes due the State of Arkansas or any political subdivision of the state as the result of the business for which the applicant is seeking a license. They shall also be available to satisfy any judgment which may be rendered against the licensee as a result of the operation of the business licensed under this chapter.

(c) At the time of making his or her initial application, the applicant shall pay to the department the sum of twenty-five dollars (\$25.00) as

a fee for investigating the application, and the additional sum of twenty-five dollars (\$25.00) shall be paid for an initial license fee for a period terminating on the last day of the current calendar year. Thereafter, the annual renewal license fee shall be twelve dollars and fifty cents (\$12.50). If the application for an initial license is filed after June 30 in any year, the license fee for the remainder of the year shall be only twelve dollars and fifty cents (\$12.50).

(d) No initial license shall be issued until the expiration of a period of at least thirty (30) days after the date on which the application therefor is filed with the department.

(e) The department is authorized to promulgate rules and regulations not inconsistent herewith to provide for the effective discharge of the responsibilities granted by this chapter.

History. Acts 1981, No. 87, § 2; 1983, No. 374, § 1; A.S.A. 1947, § 71-5402.

17-23-203. Seller identification.

Every person required to be licensed under this chapter shall:

(1) Require proof of identification of every seller from whom precious metals or an article made from or containing a precious metal is to be purchased for an amount in excess of fifty dollars (\$50.00);

(2) Require the seller to sign a statement on a form to be approved by the Department of Arkansas State Police stating that the seller is the legal owner of the property or is the agent of the owner authorized to sell the property, and when and where or in what manner the property was obtained;

(3) Require the seller to place a legible print of his or her right thumb as an identifying mark on a form to be approved by the department; and

(4) Before purchasing any precious metal or article made from or containing a precious metal for a price in excess of fifty dollars (\$50.00), require the seller, if a minor, to present written authorization to sell by the parent or legal guardian of the minor, which includes the relationship, address, and telephone number of the parent or guardian.

History. Acts 1981, No. 87, § 3; 1983, No. 374, § 2; A.S.A. 1947, § 71-5403.

17-23-204. Melt-down bullion.

When a proposed transaction involves the buying of precious metal bulk bullion which appears to have been the result of a melt-down of a former article containing a precious metal, the buyer must first inquire as to what was the source of the item before the melt-down and must notify the Department of Arkansas State Police or the office of the county sheriff or municipal police department and obtain permission from that law enforcement agency before consummating any agreement.

History. Acts 1981, No. 87, § 3; 1983, No. 374, § 2; A.S.A. 1947, § 71-5403.

17-23-205. Disclosures.

Every person required to be licensed under this chapter shall inform the prospective seller of the price per ounce currently being paid for the particular precious metal offered by the prospective seller, and the precious metals shall be weighed in full sight of the prospective seller.

History. Acts 1981, No. 87, § 3; 1983, No. 374, § 2; A.S.A. 1947, § 71-5403.

17-23-206. Records.

(a) Every person licensed under this chapter shall keep a record book obtained from or under the direction of the Department of Arkansas State Police containing a comprehensive record of all transactions concerning precious metals involving an amount in excess of fifty dollars (\$50.00).

(b) The record shall include the name, address, and telephone number of the seller and a complete and accurate description of the property purchased, including any serial numbers or other identifying marks or symbols and the date and hour of the transaction.

(c) All persons licensed under this chapter shall at least weekly deliver or mail to the chief law enforcement officer of the city or town or the sheriff of the county in which the business is located a copy of all entries in the record required to be kept by subsections (a) and (b) of this section during the preceding seven-day period.

(d) All records and reports received by the chief law enforcement officer of the city or town or sheriff of the county shall be available for inspection only by law enforcement officers for law enforcement purposes.

History. Acts 1981, No. 87, §§ 4, 5; 1981, No. 541, §§ 2, 3; 1983, No. 374, § 3; A.S.A. 1947, §§ 71-5404, 71-5405.

17-23-207. Holding periods.

(a)(1) All persons licensed under this chapter shall retain possession of precious metals or articles containing precious metals, in an unaltered condition, for the period specified in this section.

(2) All gold and articles containing gold shall be retained in possession for a period of three (3) days.

(3) All other precious metals or articles containing other precious metals shall be retained for a period of seven (7) days.

(4) The period of retention shall begin on the date that the acquisition of the precious metal is reported in writing to the chief law enforcement officer of the city or town or sheriff of the county.

(b) If the chief law enforcement officer of the city or town or sheriff of the county has probable cause to believe that precious metals or an article made from or containing a precious metal has been stolen, he or she may give notice in writing to the licensee to retain the precious metal or article for an additional period of fifteen (15) days. The licensee shall retain the property for the additional fifteen-day period unless the notice is revoked in writing within the fifteen-day period.

History. Acts 1981, No. 87, § 5; 1981, No. 541, § 3; A.S.A. 1947, § 71-5405.

17-23-208. Disposition of funds.

All fees collected under the provisions of this chapter shall be classified as special revenues and shall be deposited in the Department of Arkansas State Police Fund.

History. Acts 1981, No. 87, § 8; A.S.A. 1947, § 71-5408.

CHAPTER 24
COLLECTION AGENCIES

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. STATE BOARD OF COLLECTION AGENCIES.
- 3. LICENSING.
- 4. NONRESIDENT COLLECTION AGENCIES.
- 5. ARKANSAS FAIR DEBT COLLECTION PRACTICES ACT.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-21-101 et seq.

RESEARCH REFERENCES

- Am. Jur.** 15A Am. Jur. 2d, Coll. & Cr. lection Practices Act: New Protection for Consumers, Russell, 32 Ark. L. Rev. 505.
- Ark. L. Rev.** Comments: Fair Debt Col-

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-24-101. Definition.
- 17-24-102. Exemptions.
- 17-24-103. Penalties.

SECTION.

- 17-24-104. Sanctions.
- 17-24-105. Remedies.

Effective Dates. Acts 1965, No. 145, §§ 13, 14; July 1, 1965. Emergency clause provided: "It having been found by the General Assembly of the State of Arkansas that there is a great need for regulation of collection agencies in this state due to undesirable methods of collection employed by some such agencies, and that that the profession itself would be greatly improved by such regulation; therefore, this act being necessary for immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and the provisions of this act shall be in full force and effect from the date of its enactment." Approved Mar. 9, 1965.

Acts 1969, No. 214, § 9; Mar. 10, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that many nonresident persons, partnerships, associations and foreign corporations not authorized to do business in this state are taking accounts of Arkansas creditors for collection and that such persons, partnerships, associations and corporations are charging such creditors outrageous and unreasonable amounts for the collection of such accounts; that in order to challenge the unconscionable contracts entered into by such creditors and such nonresident persons, partnerships, associations and foreign corporations the

creditors must go to the extra expense and inconvenience of traveling to another state, hiring an out-of-state attorney and presenting his cause of action in the courts of other states; that in order to permit Arkansas residents to bring such actions in Arkansas courts and in order to establish a reasonable limit on the fees charged by both resident and nonresident persons, partnerships, associations and corporations engaging in the business of collection of accounts, it is necessary that this act become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 366, § 3; Mar. 9, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that some Arkansas collection agencies are failing to remit collected funds to their clients within a reasonable time and that this act is immediately necessary in order to prevent undue financial damage to such clients. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

17-24-101. Definition.

As used in this chapter, unless the context otherwise requires, "collection agency" means any person, partnership, corporation, association, limited liability corporation, or firm which engages in the collection of delinquent accounts, bills, or other forms of indebtedness owed or due or asserted to be owed or due to another or any person, partnership, corporation, association, limited liability corporation, or firm using a fictitious name or any name other than its own in the collection of their own accounts receivable, or any person, partnership, corporation, association, limited liability corporation, or firm which solicits claims for collection or any person, partnership, corporation, association, limited liability corporation, or firm that purchases and attempts to collect delinquent accounts or bills.

History. Acts 1965, No. 145, § 2; A.S.A. 1947, § 71-2002; Acts 2009, No. 1455, § 2.

Amendments. The 2009 amendment rewrote the section.

17-24-102. Exemptions.

- (a) This chapter does not apply to:
- (1) Regular employees of a single creditor;
 - (2) Banks;
 - (3) Trust companies;
 - (4) Savings and loan associations;
 - (5) Abstract companies doing an escrow business;
 - (6) Licensed real estate brokers and agents when the claims or accounts being handled by the broker or agent are related to or in connection with the broker's or agent's regular real estate business;
 - (7) Express and telegraph companies subject to public regulation and supervision;
 - (8) Attorneys at law who use their own names or the names of their law firms to collect or attempt to collect claims, accounts, bills, or other forms of indebtedness owed to them individually or as a firm;
 - (9)(A) Persons, firms, corporations, associations, limited liability corporations, or partnerships handling claims, accounts, or collections under an order of any court.
- (B) However, child support collection agencies not operating pursuant to Title IV-D of the Social Security Act are not exempt from this chapter and shall be subject to licensure; and
- (10) Any person, firm, corporation, association, limited liability corporation, or partnership that, for a valuable consideration, purchases accounts, claims, or demands of another that were not in default or delinquent at the time of acquisition and then in the purchaser's own name proceeds to assert or collect the accounts, claims, or demands.
- (b) Nothing in § 17-24-301, § 17-24-309, § 17-24-401, or this chapter with respect to licensure by the State Board of Collection Agencies or limitations of fees for collection services shall include or be applicable to attorneys at law licensed to practice in the State of Arkansas who are engaged in rendering legal services for clients in the collection of accounts, debts, or claims, nor shall § 17-24-301, § 17-24-309, § 17-24-401, or this chapter amend or repeal in any way the exemptions set out in subsection (a) of this section.
- (c)(1) Nothing in this chapter shall include or be applicable to the foreclosure of real property under the provisions of § 18-49-101 et seq. or § 18-50-101 et seq.
- (2) Foreclosure of real property is not deemed to be debt collection as defined in the federal Fair Debt Collections Practices Act, 15 U.S.C. § 1692a(6), as in existence on January 1, 2005.

History. Acts 1965, No. 145, § 9; 1969, No. 214, § 2; A.S.A. 1947, §§ 71-2009, 71-2011; Acts 1993, No. 1245, § 1; 1997, No. 246, § 1; 2005, No. 1882, § 1; 2009, No. 1455, § 3.

Amendments. The 2005 amendment added (c).

The 2009 amendment, in (a), rewrote (a)(8), redesignated (a)(9) as (a)(8)(A) and (B), redesignated the subsequent subdivision accordingly, and inserted "limited liability corporations or partnerships" or variant in present (a)(8)(A) and (a)(9); substituted "chapter" for "section" in (b);

and made related and minor stylistic changes. Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

U.S. Code. Title IV-D of the Social

17-24-103. Penalties.

(a) Any collection agency that engages in the business activities of a collection agency without a valid license issued pursuant to this chapter and any person, partnership, corporation, or association that shall violate any provision of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500). Each day of the violation shall constitute a separate offense.

(b)(1) The State Board of Collection Agencies is authorized to impose monetary fines as civil penalties to be paid for failure to comply with the provisions of this chapter or the regulations promulgated pursuant thereto.

(2) Prior to the imposition of monetary fines, the board shall provide notice and opportunity to be heard in accordance with hearing procedures in effect for the revocation, suspension, or refusal of licensure.

History. Acts 1965, No. 145, § 10; A.S.A. 1947, § 71-2010; Acts 1993, No. 1245, § 2; 1997, No. 246, § 2; 2009, No. 1455, § 4.

Amendments. The 2009 amendment substituted “collection agency” for “person, partnership, corporation, or association” in (a).

17-24-104. Sanctions.

(a) A collection agency that fails to remit to its client funds collected for the client within the calendar month following the month of collection, shall not be entitled to a collection fee and shall remit the total funds collected to the client.

(b) If a collection agency fails to remit funds collected to its client within the calendar month following the month of collection and does not remit the total funds collected for the client to the client within sixty-one (61) days of the date of collection, the State Board of Collection Agencies may:

- (1) Suspend or revoke the license of the collection agency; and
- (2) Impose a civil penalty under § 17-24-103.

History. Acts 1981, No. 366, § 1; A.S.A. 1947, § 71-2016; Acts 2009, No. 1455, § 5.

made minor stylistic changes in (a), and rewrote (b).

Amendments. The 2009 amendment

17-24-105. Remedies.

When any person, partnership, corporation, or association engages in the business activities of a collection agency without a valid license issued pursuant to this chapter or has had the license revoked, suspended, or refused, in accordance with the provisions of this subchapter, the State Board of Collection Agencies shall have the right to petition the circuit court in the jurisdiction in which the collection

activity has occurred and, upon affidavit, secure a writ of injunction, without bond, restraining and prohibiting the person, partnership, corporation, or association from operating the collection agency.

History. Acts 1993, No. 1245, § 3. cuit courts, Ark. Const. Amend. 80, §§ 6, 19.
Cross References. Jurisdiction of cir-

SUBCHAPTER 2 — STATE BOARD OF COLLECTION AGENCIES

SECTION.
 17-24-201. Creation — Members.
 17-24-202. Organization and proceedings.

SECTION.
 17-24-203. Rules and regulations.

Effective Dates. Acts 1965, No. 145, §§ 13, 14: July 1, 1965. Emergency clause provided: "It having been found by the General Assembly of the State of Arkansas that there is a great need for regulation of collection agencies in this state due to undesirable methods of collection employed by some such agencies, and that the profession itself would be greatly improved by such regulation; therefore, this act being necessary for immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and the provisions of this act shall be in full force and effect from the date of its enactment." Approved Mar. 9, 1965.

Acts 1983, No. 131, § 6 and No. 135, § 6: Feb. 10, 1983. Emergency clauses provided: "It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as to questions coming before such bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is

hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1018, § 8: Apr. 2, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that Arkansas Code 25-16-903 authorized members of the Advisory Committee on Petroleum Storage Tanks and members of the State Marketing Board of Recyclables to receive a stipend for attending board meetings; that Arkansas Code 8-7-904 and 8-9-201 were enacted prior to Arkansas Code 25-16-903 and do not mention stipends; that the earlier code sections should be amended to parallel the authority granted in § 25-16-903; that this act makes those technical corrections; and that this act should go into effect as soon as possible in

order to avoid confusion. It is further found and determined by the General Assembly that the current law concerning expense reimbursement for the State Board of Collection Agencies does not conform to Arkansas Code 25-16-901 et seq.; the State Board of Collection Agencies should be allowed to receive a stipend; and that this act is immediately necessary for the effective operation of the State Board of Collection Agencies. Therefore an emergency is declared to exist and this act

being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

17-24-201. Creation — Members.

(a)(1) There is created a State Board of Collection Agencies composed of five (5) members to be appointed by the Governor.

(2) The members shall serve three-year terms without compensation except they may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(b)(1)(A)(i) One (1) member shall be selected by the Governor from a list of three (3) names furnished to him or her by the Associated Credit Bureaus of Arkansas and another shall be selected from a list of three (3) names submitted by the Arkansas members of the American Collectors Association.

(ii) The persons whose names are submitted to the Governor by the Associated Credit Bureaus of Arkansas and the Arkansas members of the American Collectors Association shall all be actively engaged as the owners or managers of a collection agency or someone employed by collection agencies in an executive capacity.

(B) All nominees on the list submitted to the Governor shall be individuals who have been actively engaged in connection with the operation of a collection agency for five (5) years next preceding their appointment.

(2) One (1) member, who shall not be a member of either such association, shall be selected from the public at large.

(3)(A) One (1) member shall represent the elderly and shall be sixty (60) years of age or older.

(B) This member shall not be actively engaged in or retired from the operation of a collection agency.

(C) He or she shall be selected from the state at large subject to confirmation by the Senate and shall be a full voting member but shall not participate in the grading of examinations.

(4)(A) One (1) member shall be selected to represent the check-cashing industry.

(B) He or she shall be an Arkansas resident who is actively engaged as the owner or manager of a check-cashing operation licensed to do business in the State of Arkansas.

History. Acts 1965, No. 145, § 3; 1983, 2003; Acts 1997, No. 250, § 131; 1997, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 1018, § 3; 2001, No. 1766, § 1. 5; A.S.A. 1947, §§ 6-623 — 6-626, 71-

17-24-202. Organization and proceedings.

(a)(1) The State Board of Collection Agencies shall meet and shall select from its membership a chair, vice chair, and secretary.

(2) No one (1) member of the board shall hold more than one (1) of the offices.

(b) Meetings of the board shall be held upon the written call of the chairman of the board or upon the written request of two (2) members of the board.

(c) A majority of the board shall constitute a quorum.

History. Acts 1965, No. 145, § 3; A.S.A. 1947, § 71-2003.

17-24-203. Rules and regulations.

(a) The State Board of Collection Agencies shall have the authority to promulgate rules and regulations to implement the provisions of this chapter which are not inconsistent herewith.

(b) The board shall use, to the greatest extent possible, the interpretation and construction of the Fair Debt Collection Practices Act and any other applicable portions of the debt collection laws of the United States in interpreting and applying this chapter and the rules and regulations promulgated by the board.

History. Acts 1965, No. 145, § 4; A.S.A. 1947, § 71-2004; Acts 1995, No. 288, § 1. Practices Act, referred to in this section, is codified as 15 U.S.C. § 1692 et seq.

U.S. Code. The Fair Debt Collection

SUBCHAPTER 3 — LICENSING

SECTION.

- 17-24-301. License required.
- 17-24-302. Qualifications — Restriction.
- 17-24-303. Application — Issuance — Transferability.
- 17-24-304. Expiration and renewal.
- 17-24-305. Fees — Disposition.
- 17-24-306. Bond.

SECTION.

- 17-24-307. Grounds for revocation, suspension, or refusal.
- 17-24-308. Revocation, suspension, or refusal — Procedure.
- 17-24-309. Collection charges — Limits.
- 17-24-310. Annual notice to client of accounting requirement.

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Effective Dates. Acts 1965, No. 145, §§ 13, 14: July 1, 1965. Emergency clause provided: "It having been found by the General Assembly of the State of Arkansas that there is a great need for regula-

tion of collection agencies in this state due to undesirable methods of collection employed by some such agencies, and that the profession itself would be greatly improved by such regulation; therefore, this act being necessary for immediate preservation of the public peace, health and safety, an emergency is hereby declared to

exist and the provisions of this act shall be in full force and effect from the date of its enactment." Approved Mar. 9, 1965.

Acts 1969, No. 214, § 9: Mar. 10, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that many nonresident persons, partnerships, associations and foreign corporations not authorized to do business in this state are taking accounts of Arkansas creditors for collection and that such persons, partnerships, associations and corporations are charging such creditors outrageous and unreasonable amounts for the collection of such accounts; that in order to challenge the unconscionable contracts entered into by such creditors and such nonresident persons, partnerships, associations and foreign corporations the creditors must go to the extra expense and inconvenience of traveling to another state, hiring an out-of-state attorney and presenting his cause of action in the courts of other states; that in order to permit Arkansas residents to bring such actions in Arkansas courts and in order to establish a reasonable limit on the fees charged by both resident and nonresident persons, partnerships, associations and corporations engaging in the business of collection of accounts, it is necessary that this act become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 86, § 3: approved Feb. 9, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that there is a great need for increased revenues for the administration and operation of the State Board of Collection Agencies and for revising said agency's fiscal year to coincide with that of the state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from the date of its enactment."

Acts 1985, No. 829, § 4: approved Apr. 4, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that there is a great need for informing

the business and professional communities of their rights under the Arkansas laws regulating collection agencies. Therefore, an emergency is declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety is and shall be in full force and effect from the date of its enactment."

Acts 1985, No. 830, § 3: approved Apr. 4, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that there is a great need for increased revenues for the administration and operation of the State Board of Collection Agencies and for revising said agency's fiscal year to coincide with that of the state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from the date of its enactment."

Acts 1989, No. 792, § 4: Mar. 21, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law is not clear regarding the disposition of surety bonds by the State Board of Collection Agencies; that it currently holds some forfeited bonds that should be disposed of as soon as possible; that this Act provides for the disposition of those bonds; and therefore this Act should be given immediate effect. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 126, § 12: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1991 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1991 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby de-

clared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991.”

Acts 2005, No. 2268, § 12: July 1, 2005. Emergency clause provided: “It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2005 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2005 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2005.”

Acts 2007, No. 1217, § 12: July 1, 2007. Emergency clause provided: “It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2007 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2007 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate

preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2007.”

Acts 2009, No. 1413, § 8: July 1, 2009. Emergency clause provided: “It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2009 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2009 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2009.”

Acts 2010, No. 281, § 8: July 1, 2010. Emergency clause provided: “It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2010 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2010 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2010.”

17-24-301. License required.

Unless licensed by the State Board of Collection Agencies under this subchapter it is unlawful to:

- (1) Engage in the collection of delinquent accounts, bills, or other forms of indebtedness;
- (2) Use a fictitious name or any name other than their own in the collection of their own accounts receivable;
- (3) Solicit claims for collection; or

- (4) Purchase and attempt to collect delinquent accounts or bills.

History. Acts 1965, No. 145, § 1; 1969, No. 214, § 1; A.S.A. 1947, § 71-2001; Acts 2009, No. 1455, § 6.

Amendments. The 2009 amendment rewrote the section.

17-24-302. Qualifications — Restriction.

(a) The State Board of Collection Agencies shall have the authority to issue a license to an applicant for a license to do business as a collection agency, provided that the applicant meets the following qualifications:

- (1) The applicant is at least twenty-one (21) years of age;
- (2) If a partnership, the names of the partners, their ages, sex, and their business address are provided, and the members of the partnership are at least twenty-one (21) years of age; and
- (3) The proposed managers of a corporation or the owners of not less than fifty percent (50%) of the stock of the corporation are at least twenty-one (21) years of age.

(b) No sheriff, deputy sheriff, constable, deputy constable, state police officer, or other law enforcement officer shall be licensed in any manner to engage in the business of operating a collection agency or acting as a collector for a collection agency.

History. Acts 1965, No. 145, § 5; A.S.A. 1947, § 71-2005; Acts 1993, No. 1219, § 5; 1995, No. 1296, § 64.

17-24-303. Application — Issuance — Transferability.

(a) The State Board of Collection Agencies shall have the authority to require an applicant for a license to submit an application in writing containing such information as it shall deem necessary and pertinent and may require the character and business references which it deems appropriate.

- (b) Licenses issued by the board are not transferable.

History. Acts 1965, No. 145, § 5; A.S.A. 1947, § 71-2005; Acts 2009, No. 1455, § 7.

Publisher's Notes. Acts 1965, No. 145, § 5, provided that any person, firm, corporation, or association which had been operating a collection agency business for two years prior to March 9, 1965, which met all the requirements of this chapter,

should, upon payment of fees and furnishing the bond required by § 17-24-306, be issued a collection agency license as provided in this chapter.

Amendments. The 2009 amendment deleted (b) and redesignated the subsequent subsection accordingly.

17-24-304. Expiration and renewal.

(a) All collection agency licenses and collection agency employee licenses shall expire annually on June 30.

(b) All licensees under this chapter shall apply for the renewal of their licenses, on forms to be prescribed by the State Board of Collection

Agencies, on or before July 1 of the fiscal year for which the licenses are sought.

(c) The board shall have the authority to require that the licensee's manager certify in writing that the requirement in § 17-24-310 has been met as a condition for renewal of the agency license.

History. Acts 1965, No. 145, § 7; 1979, 830, § 1; A.S.A. 1947, §§ 71-2007, 71-No. 86, § 1; 1985, No. 829, § 2; 1985, No. 2018.

17-24-305. Fees — Disposition.

(a) The State Board of Collection Agencies may charge an annual license fee not to exceed one hundred twenty-five dollars (\$125) for licensing each collection agency and an annual fee of fifteen dollars (\$15.00) for registering each employee of the licensed collection agency who as an employee solicits, collects, or attempts to collect any delinquent account or accounts by telephone, mail, personal contact, or otherwise.

(b) All income from fees imposed under this section shall be distributed as follows:

(1)(A) Beginning July 1, 2006, and each July 1 thereafter, the first one hundred fifteen thousand dollars (\$115,000) in fees received by the board shall be remitted in one (1) payment by the board to the Treasurer of State for the Division of Medical Services of the Department of Human Services and deposited into a paying account as determined by the Chief Fiscal Officer of the State to be used in accordance with § 20-10-705.

(B) The funds remaining after the distribution in subdivision (b)(1)(A) of this section for the fiscal year ending June 30, 2007, and funds each July 1 thereafter received by the board in an amount not to exceed six hundred thousand dollars (\$600,000) each fiscal year shall be remitted by the board to the University of Arkansas for Medical Sciences for deposit into a financial institution in accordance with the policies of the University of Arkansas. The funds shall be expended for the College of Pharmacy and the College of Nursing in accordance with § 6-64-417.

(C) The funds remaining after the distributions in subdivisions (b)(1)(A) and (B) of this section for the fiscal year ending June 30, 2007, and funds received by the board each July 1 thereafter in an amount not to exceed two hundred fifty thousand dollars (\$250,000) each fiscal year shall be remitted by the board to Arkansas State University — Mountain Home for deposit into the Arkansas State University — Mountain Home Fund. The funds shall be expended exclusively for the Arkansas State University — Mountain Home Practical Nurse Program.

(D) The funds remaining after the distributions in subdivisions (b)(1)(A)-(C) of this section for the fiscal year ending June 30, 2009, and funds received by the board each July 1 thereafter in an amount not to exceed one hundred thousand dollars (\$100,000) each fiscal

year shall be remitted by the board to the University of Central Arkansas for deposit into the University of Central Arkansas Fund. The funds shall be expended exclusively for the University of Central Arkansas Department of Nursing.

(E)(i) The funds remaining after the distributions in subdivisions (b)(1)(A)-(D) of this section for the fiscal year ending June 30, 2010, and funds received by the board each July 1 thereafter in an amount not to exceed one hundred thousand dollars (\$100,000) each fiscal year shall be remitted by the board to Southern Arkansas University for deposit into the Southern Arkansas University Fund.

(ii) Funds shall be expended exclusively for personal services and operating expenses of the Southern Arkansas University system.

(F) Funds remaining after the distributions in subdivisions (b)(1)(A)-(E) of this section shall be deposited into the State Board of Collection Agencies account in some bank authorized to do business in this state.

History. Acts 1965, No. 145, § 7; 1979, No. 86, § 1; 1985, No. 830, § 1; A.S.A. 1947, § 71-2007; Acts 1999, No. 1500, § 1; 2005, No. 2268, § 7; 2007, No. 1217, § 7; 2009, No. 1413, § 4; 2009, No. 1455, § 8; 2010, No. 281, § 4.

Amendments. The 2005 amendment rewrote (b).

The 2007 amendment deleted former (b)(1) and (2) and redesignated the remaining subsection accordingly; inserted "Health and" in present (b)(1)(A); substituted "(1)(A)" for "(3)(A)" in present (b)(1)(B); added present (b)(1)(C) and redesignated former (b)(1)(C) as present

(b)(1)(D); substituted "(b)(1)(A)-(C)" for "(b)(3)(A) and (b)(3)(B)" in (b)(1)(D); and made stylistic changes.

The 2009 amendment by No. 1413 inserted (b)(1)(D), redesignated the subsequent subdivision accordingly, and substituted "(b)(1)(A)-(D)" for "(b)(1)(A)-(C)" in (b)(1)(E).

The 2009 amendment by No. 1455 substituted "registering" for "licensing" in (a).

The 2010 amendment added present (b)(1)(E) and redesignated former (b)(1)(E) as (b)(1)(F); and substituted "(b)(1)(A)-(E)" for "(b)(1)(A)-(D)" in (b)(1)(F).

17-24-306. Bond.

(a) The State Board of Collection Agencies shall require each licensee to secure a surety bond in an amount not less than five thousand dollars (\$5,000) nor more than twenty-five thousand dollars (\$25,000) for each location, with the security on the bond to be approved by the board.

(b) The aggregate liability of the surety for all breaches of the conditions of the bond shall, in no event, exceed the amount of the bond. The surety shall have a right to cancel such bond upon giving thirty (30) days' notice to the board and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the cancellation.

(c) The bond shall be made payable to the State Board of Collection Agencies.

(d) The board may promulgate rules to:

(1) Disburse bond funds to claimants;

(2) If the bond proceeds are insufficient to satisfy all legitimate claims, distribute the funds pro rata among the claimants; or

(3) In the discretion of the board, require the sureties to deal directly with the claimants.

History. Acts 1965, No. 145, § 6; 1979, No. 179, § 1; A.S.A. 1947, § 71-2006; Acts 1989, No. 792, § 1; 1991, No. 126, § 4; 1999, No. 1500, § 2; 2009, No. 1455, § 9.

Amendments. The 2009 amendment, in (a), inserted “surety” and deleted the last sentence; deleted (b) and redesign-

ated the subsequent subsections accordingly; subdivided (d), substituted “rules to” for “regulations under which it can” in its introductory language, and deleted “pursuant to regulations promulgated by the board” at the end of present (d)(3); and made related and minor stylistic changes.

17-24-307. Grounds for revocation, suspension, or refusal.

The State Board of Collection Agencies shall have the authority to revoke, suspend, or refuse to issue a license for violation of this chapter, or upon receipt of evidence as follows:

- (1) False or misrepresented statements on application;
- (2) Sale or transfer of ownership of agency;
- (3) Conviction of any crime involving moral turpitude;
- (4) Aiding or abetting any unlicensed person to engage in business as a collection agency;
- (5) Publishing or posting, or causing to be published or posted, any list of debtors, commonly known as “deadbeat” lists;
- (6) Collecting or attempting to collect by the use of any methods contrary to the postal laws and regulations of the United States;
- (7) Having in his or her possession or making use of any badge, using a uniform of any law enforcement agency or any simulation thereof, or making any statements which might be construed as indicating an official connection with any federal, state, county, or city law enforcement agency, or any other governmental agency, while engaged in collection agency business;
- (8) Distributing any printed matter which is made to be similar or to resemble government forms or documents, or legal forms used in civil or criminal proceedings;
- (9) Advertising for sale or threatening to advertise for sale any claim as a means of endeavoring to enforce payment thereof, or agreeing to do so for the purpose of soliciting claims, except where the licensee has acquired claims as an assignee for the benefit of creditors or where the licensee is acting under the order of a court of competent jurisdiction;
- (10) Engaging in any unethical practices or resorting to any illegal means or methods of collection;
- (11) Using profanity, obscenity, or vulgarity while engaged in the collection of claims;
- (12) Addressing a letter to or telephoning a debtor at his or her place of employment unless a good-faith attempt has been made to contact the debtor at his or her usual place of abode by letter and the mail has not been returned and no answer has been received; or
- (13) Using violence or threats of physical violence while engaged in the collection of claims.

History. Acts 1965, No. 145, § 8; A.S.A. 1947, § 71-2008; Acts 2009, No. 1455, § 10.

Amendments. The 2009 amendment

substituted “Addressing a letter to or telephoning” for “No licensee shall address a letter to or telephone any” in (12).

17-24-308. Revocation, suspension, or refusal — Procedure.

(a)(1) Upon the receipt of evidence of any violation, the State Board of Collection Agencies shall order a hearing to be held.

(2) All interested parties shall be apprised, at least twenty (20) days prior to the hearing, as to the time and place of the hearing.

(3) The board shall have authority to summon and examine witnesses, gather information by affidavit and deposition, and subpoena those business records pertinent to the charges, as to any alleged violator.

(4) Revocation, suspension, or refusal to issue shall be by order of the board.

(b) Any party to the proceeding shall have the right to appeal from the order of the board to the Pulaski County Circuit Court which shall try the case. The appeal may be taken by filing a petition with the clerk of the court within thirty (30) days of the date of the decision of the board. The decision of the circuit court shall be appealable to the Supreme Court in the same manner as civil cases are appealed.

(c) In the event that the holder of a license shall fail to secure a renewal thereof, or in the event of the suspension or revocation of the license by the board, and in the event that an appeal is taken to the courts as provided in this section, the holder of the license shall be allowed, during the period of the appeal, to operate the business of a collection agency as though no such action had been taken by the board.

History. Acts 1965, No. 145, § 4; A.S.A. 1947, § 71-2004; Acts 1999, No. 1500, § 3.

17-24-309. Collection charges — Limits.

(a) No collection agency mentioned in § 17-24-103 shall charge as a collection charge or fee an amount in excess of fifty percent (50%) of the total amount actually collected on all accounts for any one (1) client, nor more than fifty percent (50%) of the total amount actually collected on any one (1) account, nor shall a minimum charge in excess of one dollar (\$1.00) be made on any partially or totally collected account.

(b) All contracts providing for a greater collection charge or fee or a greater minimum charge than provided in this section entered into between any creditor in this state and any collection agency covered by this chapter shall be void. The creditor shall have, in addition to all other remedies now or hereafter provided by law, a cause of action to recover all amounts collected by the collection agency on the creditor's account or accounts.

History. Acts 1969, No. 214, § 2; A.S.A. 1947, § 71-2011; Acts 2009, No. 1455, § 11.

Amendments. The 2009 amendment substituted “collection agency” for “per-

son, partnership, association, or corporation” in three places; substituted “§ 17-24-103” for “§ 17-24-301” in (a); and made a minor stylistic change.

17-24-310. Annual notice to client of accounting requirement.

(a) Each collection agency required to be licensed under this chapter shall, annually, within the month of April, give written notice to each client for whom it is collecting or attempting to collect that collection agencies licensed by the State of Arkansas are required by law to remit collected funds to the clients within the calendar month following the month of collection.

(b) No such notice is required to a forwarder who is also a licensee of the State of Arkansas.

History. Acts 1985, No. 829, § 1; A.S.A. 1947, § 71-2017.

SUBCHAPTER 4 — NONRESIDENT COLLECTION AGENCIES

SECTION.

17-24-401. “Long arm” jurisdiction.

17-24-402. Motion to quash writ or set aside service.

17-24-403. Service of process.

SECTION.

17-24-404. Security prerequisite to filing defense pleading — Exception — Postponement.

Effective Dates. Acts 1965, No. 145, §§ 13, 14; July 1, 1965. Emergency clause provided: “It having been found by the General Assembly of the State of Arkansas that there is a great need for regulation of collection agencies in this state due to undesirable methods of collection employed by some such agencies, and that the profession itself would be greatly improved by such regulation; therefore, this act being necessary for immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and the provisions of this act shall be in full force and effect from the date of its enactment.” Approved Mar. 9, 1965.

Acts 1969, No. 214, § 9; Mar. 10, 1969. Emergency clause provided: “It is hereby found and determined by the General Assembly that many nonresident persons, partnerships, associations and foreign corporations not authorized to do business in this state are taking accounts of Arkansas creditors for collection and that such persons, partnerships, associations and corporations are charging such creditors

outrageous and unreasonable amounts for the collection of such accounts; that in order to challenge the unconscionable contracts entered into by such creditors and such nonresident persons, partnerships, associations and foreign corporations the creditors must go to the extra expense and inconvenience of traveling to another state, hiring an out-of-state attorney and presenting his cause of action in the courts of other states; that in order to permit Arkansas residents to bring such actions in Arkansas courts and in order to establish a reasonable limit on the fees charged by both resident and nonresident persons, partnerships, associations and corporations engaging in the business of collection of accounts, it is necessary that this act become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

17-24-401. "Long arm" jurisdiction.

Any nonresident person, partnership, association, or any foreign corporation not authorized to do business in this state whose sole business contact with this state is the soliciting of accounts in this state by mail, telephone, telegraph, or by other like means originating outside this state, or the taking or accepting for collection of any account or accounts in this state by such means, shall by such acts:

(1) Subject himself or herself to the jurisdiction of the proper courts of this state under the procedure provided in §§ 17-24-403 and 17-24-404 on any cause of action arising out of or connected with the collection of any such account or accounts;

(2) Be deemed to have consented to comply with the maximum collection charges or fees provided in § 17-24-309; and

(3) Be deemed to have consented to and designated the Secretary of State to be the true and lawful attorney of the person, partnership, association, or corporation upon whom may be served all legal process in any action, suit, or proceeding in any court by any resident of this state arising out of or connected with the collection of any such account or accounts. Such acts shall be signification of its agreement that any legal process in any court action or suit so served shall be of the same legal force and validity as personal service of process in this state upon the person, partnership, association, or corporation. Service of process shall be made upon the Secretary of State pursuant to § 17-24-403.

History. Acts 1965, No. 145, § 1; 1969, 71-2012; Acts 1997, No. 1213, § 3; 1999, No. 214, §§ 1, 3; A.S.A. 1947, §§ 71-2001, No. 1500, § 4.

17-24-402. Motion to quash writ or set aside service.

Nothing contained in § 17-24-404 shall be construed to prevent a nonresident person, partnership, association, or any foreign corporation upon whom service of process is had as provided in § 17-24-403 from filing a motion to quash a writ or to set aside service made as provided in § 17-24-403 on the grounds that the person, partnership, association, or foreign corporation has not done or committed any of the acts in this state which give rise to such service of process.

History. Acts 1969, No. 214, § 6; A.S.A. 1947, § 71-2015.

17-24-403. Service of process.

(a) Service of process in the action, suit, or proceeding in any court as authorized by § 17-24-401(3) shall be made by leaving three (3) copies in the office of the Secretary of State along with a notification that service is being effected pursuant to § 17-24-401, and by paying the Secretary of State the sum of twenty-five dollars (\$25.00). A certificate by the Secretary of State showing service and attached to the copy of the process presented to him or her for that purpose shall be sufficient

evidence of the service. Service upon the Secretary of State as attorney shall be service upon the principal.

(b) The Secretary of State shall immediately mail one (1) copy of the court process to the defendant in the court proceeding by first class mail at the defendant's last known principal place of business, and shall keep a record of all process which shall show the day and hour of receipt. The Secretary of State shall file an affidavit showing compliance with this section in the court proceedings on or before the date the defendant is required to appear or respond, unless an extension of time is allowed by the court.

(c) No plaintiff or complainant shall be entitled to a judgment or determination by default in any court proceeding in which process is served under this section until the expiration of forty-five (45) days from the date of filing of the affidavit of compliance.

(d) Nothing contained in this section shall limit or abridge the right to serve any process, notice, order, pleading, or demand upon any person, partnership, association, or corporation in any other manner now or hereafter permitted by law.

History. Acts 1969, No. 214, § 3; A.S.A. 1947, § 71-2012; Acts 1999, No. 1500, § 5.

17-24-404. Security prerequisite to filing defense pleading — Exception — Postponement.

(a) Before any nonresident person, partnership, association, or any foreign corporation upon whom service of process is had as provided by § 17-24-403 files or causes to be filed any pleading in any court action, suit, or proceeding instituted against a person, partnership, association, or corporation, he or she or it shall deposit with the clerk of the court in which the action, suit, or proceeding is pending cash or securities or bond with good and sufficient sureties to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in the court proceeding.

(b) The court may in its discretion make an order dispensing with the deposit or bond when the person, partnership, association, or corporation makes a showing satisfactory to the court that it maintains in the State of Arkansas funds or securities, in trust or otherwise, sufficient and available to satisfy any final judgment which may be entered in the court action, suit, or proceeding.

(c) In any action, suit, or proceeding in which service is made as provided in § 17-24-403, the court, in its discretion, may order any postponement as may be necessary to afford the defendant reasonable opportunity to comply with subsection (a) of this section and to defend any court action.

History. Acts 1969, No. 214, §§ 4, 5; A.S.A. 1947, §§ 71-2013, 71-2014.

SUBCHAPTER 5 — ARKANSAS FAIR DEBT COLLECTION PRACTICES ACT

SECTION.

- 17-24-501. Title.
17-24-502. Definitions.
17-24-503. Acquisition of location information.
17-24-504. Communication in connection with debt collection.
17-24-505. Harassment or abuse.
17-24-506. False or misleading representations.

SECTION.

- 17-24-507. Unfair practices.
17-24-508. Validation of debts.
17-24-509. Multiple debts.
17-24-510. Legal actions by debt collectors.
17-24-511. Furnishing certain deceptive forms.
17-24-512. Civil liability.

17-24-501. Title.

This subchapter shall be known and may be cited as the “Arkansas Fair Debt Collection Practices Act”.

History. Acts 2009, No. 1455, § 1.

17-24-502. Definitions.

As used in this subchapter:

(1) “Communication” means the conveying of information regarding a debt directly or indirectly to a person;

(2) “Consumer” means a natural person obligated or allegedly obligated to pay a debt;

(3)(A) “Creditor” means a person:

- (i) Who offers or extends credit, creating a debt; or
- (ii) To whom a debt is owed.

(B) “Creditor” does not include a person to the extent that he or she receives an assignment or transfer of a debt in default solely to facilitate collection of the debt for another;

(4) “Debt” means an obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services that are the subject of the transaction are primarily for personal, family, or household purposes, whether or not the obligation has been reduced to judgment;

(5)(A) “Debt collector” means a person who uses an instrumentality of interstate commerce or the mails in a business whose principal purpose is the collection of debts or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.

(B) Except as provided in subdivision (5)(D)(vi) of this section, “debt collector” includes a creditor who, in the process of collecting his or her own debts, uses a name other than his or her own that would indicate that a third person is collecting or attempting to collect the debts.

(C) As used in § 17-24-507(b)(6), “debt collector” includes a person who uses an instrumentality of interstate commerce or the mails in a business whose principal purpose is the enforcement of security interests.

(D) "Debt collector" does not include any:

(i) Officer or employee of a creditor while, in the name of the creditor, collecting debts for the creditor;

(ii) Person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of the person is not the collection of debts;

(iii) Officer or employee of the United States or a state to the extent that collecting or attempting to collect a debt is in the performance of his or her official duties;

(iv) Person while serving or attempting to serve legal process on another person in connection with the judicial enforcement of a debt;

(v) Nonprofit organization that, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from the consumers and distributing the amounts to creditors; or

(vi) Person collecting or attempting to collect a debt owed or due or asserted to be owed or due another to the extent the collection activity:

(a) Is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;

(b) Concerns a debt that was originated by the person;

(c) Concerns a debt that was not in default at the time it was obtained by the person; or

(d) Concerns a debt obtained by the person as a secured party in a commercial credit transaction involving the creditor; and

(6) "Location information" means:

(A) A consumer's place of abode and his or her telephone number at the consumer's place of abode; or

(B) The consumer's place of employment.

History. Acts 2009, No. 1455, § 1.

17-24-503. Acquisition of location information.

A debt collector communicating with a person other than the consumer to acquire location information about the consumer shall:

(1) Identify himself or herself, state that he or she is confirming or correcting location information concerning the consumer, and only if expressly requested, identify his or her employer;

(2) Not state that the consumer owes a debt;

(3) Not communicate with the person more than one (1) time unless:

(A) Requested to do so by the person; or

(B) The debt collector reasonably believes that:

(i) The earlier response of the person is erroneous or incomplete; and

(ii) The person now has correct or complete location information;

(4) Not communicate by postcard;

(5) Not use a language or symbol on a envelope or in the contents of a communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

(6) After the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of or can readily ascertain the attorney's name and address, not communicate with a person other than that attorney unless the attorney fails to respond to communication from the debt collector within a reasonable period of time.

History. Acts 2009, No. 1455, § 1.

17-24-504. Communication in connection with debt collection.

(a) Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of a debt:

(1)(A) At an unusual time or place or a time or place known or which should be known to be inconvenient to the consumer.

(B) In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8:00 a.m. and before 9:00 p.m. local time at the consumer's location;

(2) If the debt collector knows the consumer is represented by an attorney with respect to the debt and has knowledge of or can readily ascertain the attorney's name and address, unless:

(A) The attorney fails to respond within a reasonable period of time to a communication from the debt collector; or

(B) The attorney consents to direct communication with the consumer; or

(3) At the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving the communication.

(b) Except as provided in § 17-24-503, without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate in connection with the collection of a debt with a person other than the consumer, his or her attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

(c) If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to the debt, except:

(1) To advise the consumer that the debt collector's further efforts are being terminated;

(2) To notify the consumer that the debt collector or creditor may invoke specified remedies that are ordinarily invoked by the debt collector or creditor; or

(3)(A) When applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

(B) If the notice from the consumer is made by mail, notification is complete upon receipt.

(d) As used in this section, "consumer" includes the consumer's spouse, parent if the consumer is a minor, guardian, executor, or administrator.

History. Acts 2009, No. 1455, § 1.

17-24-505. Harassment or abuse.

(a) A debt collector may not engage in a conduct the natural consequence of which is to harass, oppress, or abuse a person in connection with the collection of a debt.

(b) Without limiting the general application of subsection (a) of this section, the following conduct is a violation of this section:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of a person;

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader;

(3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of 15 U.S.C. § 1681a(f) or 15 U.S.C. § 1681b(3), as they existed on January 1, 2009;

(4) The advertisement for sale of a debt to coerce payment of the debt;

(5) Causing a telephone to ring or engaging a person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass a person at the called number; or

(6) Except as provided in § 17-24-503, the placement of telephone calls without meaningful disclosure of the caller's identity.

History. Acts 2009, No. 1455, § 1.

17-24-506. False or misleading representations.

(a) A debt collector may not use a false, deceptive, or misleading representation or means in connection with the collection of a debt.

(b) Without limiting the general application of subsection (a) of this section, the following conduct is a violation of this section:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or a state, including without limitation the use of a badge, uniform, or facsimile thereof;

(2) The false representation of:

(A) The character, amount, or legal status of a debt; or

(B) Any services rendered or compensation that may be lawfully received by a debt collector for the collection of a debt;

(3) The false representation or implication that an individual is an attorney or that a communication is from an attorney;

(4) The representation or implication that nonpayment of a debt will result in the arrest or imprisonment of a person or the seizure, garnishment, attachment, or sale of a property or wages of a person unless the action is lawful and the debt collector or creditor intends to take the action;

(5) The threat to take an action that cannot legally be taken or that is not intended to be taken;

(6) The false representation or implication that a sale, referral, or other transfer of an interest in a debt will cause the consumer to:

(A) Lose a claim or defense to payment of the debt; or

(B) Become subject to a practice prohibited by this subchapter;

(7) The false representation or implication that the consumer committed a crime or other conduct in order to disgrace the consumer;

(8) Communicating or threatening to communicate to a person credit information that is known or that should be known to be false, including without limitation the failure to communicate that a disputed debt is disputed;

(9) The use or distribution of a written communication that simulates or is falsely represented to be a document authorized, issued, or approved by a court, official, or agency of the United States or a state or that creates a false impression as to its source, authorization, or approval;

(10) The use of a false representation or deceptive means to collect or attempt to collect a debt or to obtain information concerning a consumer;

(11) The failure to disclose:

(A) In the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral in the initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose; and

(B) In subsequent communications, that the communication is from a debt collector, except that this subdivision (b)(11) does not apply to a formal pleading made in connection with a legal action;

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value;

(13) The false representation or implication that documents are legal process;

(14) The use of a business, company, or organization name other than the true name of the debt collector's business, company, or organization;

(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer; or

(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by 15 U.S.C. § 1681a(f), as it existed on January 1, 2009.

History. Acts 2009, No. 1455, § 1.

17-24-507. Unfair practices.

(a) A debt collector may not use unfair or unconscionable means to collect or attempt to collect a debt.

(b) Without limiting the general application of subsection (a) of this section, the following actions of a debt collector violate this section:

(1) The collection of an amount, including interest, a fee, a charge, or an expense incidental to the principal obligation unless the amount is expressly authorized by the agreement creating the debt or permitted by law;

(2) The acceptance by a debt collector from a person of a check or other payment instrument postdated by more than five (5) days unless the person is notified in writing of the debt collector's intent to deposit the check or instrument not more than ten (10) nor less than three (3) business days before the deposit;

(3) The solicitation by a debt collector of a postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;

(4) Depositing or threatening to deposit a postdated check or other postdated payment instrument before the date on the check or instrument;

(5) Causing charges to be made to a person for communications by concealment of the true purpose of the communication, including without limitation charges for collect telephone calls and telegrams;

(6) Taking or threatening to take a nonjudicial action to effect dispossession or disablement of property if:

(A) No present right exists to possession of the property claimed as collateral through an enforceable security interest;

(B) No present intention exists to take possession of the property;

or

(C) The property is exempt by law from the dispossession or disablement;

(7) Communicating with a consumer regarding a debt by postcard; or

(8) Using a language or symbol other than the debt collector's address on an envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his or her business name if the name does not indicate that he or she is in the debt collection business.

History. Acts 2009, No. 1455, § 1.

17-24-508. Validation of debts.

(a) At the time of the initial communication or within five (5) days after the initial communication with a consumer in connection with the collection of a debt, unless the consumer has paid the debt, a debt collector shall send the consumer a written notice containing:

- (1) The amount of the debt;
- (2) The name of the creditor to whom the debt is owed;
- (3) A statement that unless the consumer within thirty (30) days after receipt of the notice disputes the validity of the debt or a portion of the debt, the debt will be assumed to be valid by the debt collector;
- (4) A statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt or a portion of the debt is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of the verification or judgment will be mailed to the consumer by the debt collector; and
- (5) A statement that upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor if different from the current creditor.

(b) If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt or a portion of the debt is disputed or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt or a disputed portion of the debt until the debt collector obtains verification of the debt or a copy of a judgment or the name and address of the original creditor, and a copy of the verification or judgment or name and address of the original creditor is mailed to the consumer by the debt collector.

(c) The failure of a consumer to dispute the validity of a debt under this section is not an admission of liability by the consumer.

History. Acts 2009, No. 1455, § 1.

17-24-509. Multiple debts.

If a consumer owes multiple debts and makes a single payment to a debt collector with respect to the debts, the debt collector may not apply the payment to a debt that is disputed by the consumer and, if applicable, shall apply the payment in accordance with the consumer's directions.

History. Acts 2009, No. 1455, § 1.

17-24-510. Legal actions by debt collectors.

(a) A debt collector who brings a legal action on a debt against a consumer shall:

(1) For an action to enforce an interest in real property securing the consumer's obligation, bring the action in the county where all or part of the real property is located; or

(2) For an action not described in subdivision (a)(1) of this section, bring the action only in the county:

(A) In which the consumer signed the contract sued upon; or

(B) In which the consumer resides at the commencement of the action.

(b) This subchapter does not create a cause of action by a debt collector.

History. Acts 2009, No. 1455, § 1.

17-24-511. Furnishing certain deceptive forms.

(a) It is unlawful to design, compile, and furnish a form knowing that the form would be used to create the false belief in a consumer that a person other than the creditor of the consumer is participating in the collection of or in an attempt to collect a debt the consumer allegedly owes the creditor, when in fact the person is not participating in collecting or attempting to collect the debt.

(b) A person who violates this section is liable to the same extent and in the same manner as a debt collector is liable under § 17-24-512 for failure to comply with this subchapter.

History. Acts 2009, No. 1455, § 1.

17-24-512. Civil liability.

(a) Except as otherwise provided by this section, a debt collector who fails to comply with this subchapter with respect to a person is liable to the person in an amount equal to the sum of:

(1) An actual damage sustained by the person as a result of the failure;

(2)(A) In the case of an action by an individual, the additional damages as the court may allow not exceeding one thousand dollars (\$1,000); or

(B) In the case of a class action:

(i) The amount each named plaintiff could recover under subdivision (a)(2)(A) of this section; and

(ii) The amount the court may allow for all other class members without regard to a minimum individual recovery not to exceed the lesser of five hundred thousand dollars (\$500,000) or one percent (1%) of the net worth of the debt collector; and

(3)(A) In the case of a successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

(B) If the court finds that an action under this section was brought in bad faith or for the purpose of harassment, the court may award to

the defendant attorney's fees reasonable in relation to the work expended and costs.

(b) In determining the amount of liability in an action under subsection (a) of this section, the court shall consider among other relevant factors:

(1) In an individual action under subdivision (a)(2)(A) of this section, the frequency and persistence of noncompliance by the debt collector, the nature of the noncompliance, and the extent to which the noncompliance was intentional; or

(2) In a class action under subdivision (a)(2)(B) of this section, the frequency and persistence of noncompliance by the debt collector, the nature of the noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

(c) A debt collector may not be held liable in an action brought under this subchapter if the debt collector shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

(d) An action to enforce a liability created by this subchapter may be brought in a court of competent jurisdiction within one (1) year from the date on which the violation occurs.

(e) A provision of this section imposing liability shall not apply to an act done or omitted in good faith in conformity with an advisory opinion of the Federal Trade Commission addressing appropriate conduct under the federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692 — 1692p, notwithstanding that after the act or omission has occurred, the opinion is amended, rescinded, or determined by judicial or other authority to be invalid for a reason.

History. Acts 2009, No. 1455, § 1.

CHAPTER 25

CONTRACTORS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. CONTRACTORS LICENSING BOARD.
3. LICENSING.
4. CONTRACTORS' BONDS.
5. RESIDENTIAL BUILDING CONTRACTORS COMMITTEE.

A.C.R.C. Notes. References to "this chapter" in subchapters 1-3 may not apply to subchapters 4 and 5 which were enacted subsequently.

Publisher's Notes. Prior to the 1995

replacement of this volume, this chapter was codified as § 17-22-101 et seq.

Cross References. Contractor's bonds, § 18-44-501 et seq.

RESEARCH REFERENCES

ALR. Building and construction artisan or contractor: failure to procure business or occupational license as affecting enforceability of contract or right of recovery for work done. 44 A.L.R.4th 271.

CASE NOTES

ANALYSIS

Construction.
Purpose.
Applicability.

Construction.

The language in licensing statutes must be strictly construed. *Brimer v. Arkansas Contractors Licensing Bd.*, 312 Ark. 401, 849 S.W.2d 948 (1993).

Purpose.

The purpose of this chapter is to require contractors who desire to engage in certain types of construction work to meet certain standards of responsibility, such as experience, ability, and financial condition, and these purposes are no less valid

for a subcontractor than for a general contractor. *Bird v. Pan W. Corp.*, 261 Ark. 56, 546 S.W.2d 417 (1977).

The purpose behind the Contractors Licensing Act is to require contractors who desire to engage in certain types of construction work to meet certain standards of responsibility such as experience, ability, and financial condition. *Brimer v. Arkansas Contractors Licensing Bd.*, 312 Ark. 401, 849 S.W.2d 948 (1993).

Applicability.

The contractor's licensing statute was not applicable to contract which involved only an hourly rate of pay and not the gross sum. *Western Ark. Tel. Co. v. Cotton*, 259 Ark. 216, 532 S.W.2d 424 (1976).

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-25-101. Definition.
- 17-25-102. Exemptions.
- 17-25-103. Penalties — Enforcement.

SECTION.

- 17-25-104. Injunction.
- 17-25-105. Form of indictment.
- 17-25-106. [Repealed.]

Cross References. Electricians and electrical contractors, § 17-28-101 et seq.

Notice to owner by contractor, § 18-44-115.

Effective Dates. Acts 1965, No. 150, § 23: Mar. 9, 1965. Emergency clause provided: "It has been found and is declared by the General Assembly that the statutes regulating the practice of contracting are outmoded and in many particulars impossible to administer without great prejudice to contractors and the public; that there is an urgent need to amend these statutes throughout in order to establish a fair and workable system of regulation; and that enactment of this measure will provide an appropriate remedy. Therefore, an emergency is declared to exist and this

act being necessary for the preservation of the public peace, health, and safety shall take effect and be in force from the date of its approval."

Acts 1971, No. 397, § 5: became law without Governor's signature, Mar. 25, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that greater flexibility is required in the establishment of fees to be charged by the Contractors Licensing Board for examination, issuance and renewal of contractors' licenses to enable said board to provide for the efficient regulation of licensed contractors; that the establishment of federal occupational safety and health standards for licensed contractors makes it necessary that the

Contractors Licensing Board be granted authority to advise, coordinate and inform licensed contractors in this state with respect to such standards for the purpose of assisting licensed contractors in complying therewith; and that the immediate passage of this act is necessary to accomplish the aforementioned purposes and to enable the Contractors Licensing Board to assume responsibilities for administering programs or standards promulgated with respect to occupational safety and health standards for licensed contractors if designated by appropriate federal or state laws or rules or regulations promulgated for the implementation thereof. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 684, § 2: Mar. 22, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Contractors Licensing Law is intended to protect the public with respect to construction contracts in the amount of \$20,000 or more; that it is essential that all persons who manage construction projects be licensed contractors, thereby assuring that persons of competent professional training and abilities are in control of the management of such construction projects; and that the immediate passage of this act is necessary to clarify the definition of 'contractor' under the Contractors Licensing Law to correct this situation and thereby protect the health and safety of the people of this state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 180, § 8: Feb. 22, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the per diem received by members of the Contractors Licensing Board is inadequate to compensate members of said board for the time required to administer the duties of the board under the provisions of the Contractors Licensing Law; that the duties of the Contractors Licensing Board as now provided by

law are in need of revision and clarification in order to strengthen the ability of the board to protect the interest of the public with respect to the qualifications and duties of licensed contractors in this state; and that the immediate passage of this act is necessary to accomplish such purposes. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 795, § 6: Mar. 21, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the per diem received by members of the Contractors Licensing Board is inadequate to compensate members of the Board for the time required to administer the duties of the Board under the provisions of the Contractors Licensing Law; that the provisions of the Contractors Licensing Law are in need of revision and clarification in order to strengthen the ability of the Board and to protect the interest of the public with respect to the qualifications and duties of licensed contractors in the state; and that the immediate passage of this act is necessary to accomplish such purposes. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 553, § 5: Mar. 8, 1995. Emergency clause provided: "It is found and determined by the Eightieth General Assembly of the State of Arkansas that it is customary for prime contractors to supply materials to certain types of subcontractors; that in determining whether a subcontractor is involved in a project for which he must be licensed, the cost of the materials is included, even if the materials have been provided by the prime contractor; that this requirement places an unfair burden on some subcontractors and that this act is necessary to provide immediate relief to the subcontractors. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Paul, The Law of Construction Bonds in Arkansas: A Review, 9 U. Ark. Little Rock L.J. 333.

17-25-101. Definition.

(a)(1) As used in this chapter, “contractor” means any person, firm, partnership, copartnership, association, corporation, or other organization, or any combination thereof, that, for a fixed price, commission, fee, or wage, attempts to or submits a bid to construct or demolish, or contracts or undertakes to construct or demolish, or assumes charge, in a supervisory capacity or otherwise, or manages the construction, erection, alteration, demolition, or repair, or has or have constructed, erected, altered, demolished, or repaired, under his or her, their, or its direction, any building, apartment, condominium, highway, sewer, utility, grading, or any other improvement or structure on public or private property for lease, rent, resale, public access, or similar purpose, except single-family residences, when the cost of the work to be done, or done, in the State of Arkansas by the contractor, including, but not limited to, labor and materials, is twenty thousand dollars (\$20,000) or more.

(2) However, when a person or an entity acts as a contractor in the construction, erection, alteration, demolition, or repair of his or her own or its own property, such action shall not result in the person or entity being required to obtain a license, but the person or entity shall comply with all other provisions of this subchapter.

(b) However, the twenty-thousand-dollar exception shall not apply to any project of construction in which any of the construction work necessary to complete the project, except any in-progress change orders, is divided into separate contracts of amounts less than twenty thousand dollars (\$20,000), a purpose being to circumvent the provisions of this chapter.

(c) It is the intention of this definition to include all improvements, demolition, or structures, excepting only single-family residences.

(d)(1) Materials purchased by a prime contractor from a third party shall not be considered as part of the subcontractor’s project if the prime contractor has the proper classification listed on a current contractor’s license for the work being performed by the subcontractor.

(2) Materials purchased by a person or an entity acting as a contractor in the construction, erection, alteration, or repair of his or her own or its own property from a third party shall not be considered as a part of the subcontractor’s project, provided that the subcontract is for wood framing, shingle roofing, painting, floor covering, or concrete labor.

History. Acts 1965, No. 150, § 1; 1967, 684, § 1; 1979, No. 1020, § 1; 1985, No. 142, § 1; 1971, No. 397, § 1; 1977, No. 180, § 1; A.S.A. 1947, § 71-701; Acts

1987, No. 495, § 1; 1989, No. 26, § 1; 1995, No. 553, § 1; 1999, No. 1358, § 1; 2007, No. 275, § 1.

Amendments. The 2007 amendment inserted “or demolish” and “demolition”

throughout (a) and in (c); in (a)(1), deleted “unless the context otherwise requires” following “chapter” and inserted “demolished”; deleted “must” following “entity” in (a)(2); and made stylistic changes.

CASE NOTES

ANALYSIS

Construction.
Contractor.
Costs.
Evidence.
Subcontractors.

Construction.

Code provisions imposing penalties for noncompliance with licensing requirements, such as this section and § 17-22-103 (now 17-25-103), must be strictly construed. *Wilcox v. Safley*, 298 Ark. 159, 766 S.W.2d 12 (1989).

The holding in *Bird v. Pan W. Corp.*, 261 Ark. 56, 546 S.W.2d 417 (1977) did not change the long-standing rule that language contained in licensing statutes must be strictly construed. *Wilcox v. Safley*, 298 Ark. 159, 766 S.W.2d 12 (1989).

Language of subsection (a) of this section is not clear and unambiguous because, under this subsection, a contractor is a person who attempts to or submits a bid to construct, contracts or undertakes to construct, or manages the construction, erection, alteration, or repair of a building, apartment, condominium, highway, sewer, utility, grading, or any other improvement; in narrowly construing this language, the Supreme Court of Arkansas has concluded that it is reasonably open to different interpretations. *Meadow Lake Farms, Inc. v. Cooper*, 360 Ark. 164, 200 S.W.3d 399 (2004).

Contractor.

The language of subsection (a) is not clear and unambiguous. *Wilcox v. Safley*, 298 Ark. 159, 766 S.W.2d 12 (1989).

Activities of sodding, sprigging, and seeding held not to fall within the definition of construction, erection, alteration, or repair. *Wilcox v. Safley*, 298 Ark. 159, 766 S.W.2d 12 (1989).

Trial court erred in granting summary judgment to one farmer because there existed a genuine factual issue as to whether another farmer that had provided field grading services for crop production and who claimed not to be a contractor was in fact a contractor because he had worked on property “for lease, rent, resale, public access, or similar purpose” and was, thus, operating as a contractor without a license. *Meadow Lake Farms, Inc. v. Cooper*, 360 Ark. 164, 200 S.W.3d 399 (2004).

Costs.

This section clearly indicates that the court is to look at the total cost of the work to be done and not merely the cost of materials actually ordered or passing through the contractor’s hands; in short, this section refers to the cost of the project. *Brimer v. Arkansas Contractors Licensing Bd.*, 312 Ark. 401, 849 S.W.2d 948 (1993).

Evidence.

Evidence held sufficient to find that person undertaking a project was a “contractor” within the meaning of this section. *Davidson v. Smith*, 258 Ark. 969, 530 S.W.2d 356 (1975).

Subcontractors.

The definition of contractor is not limited only to those who contract with the owner of the property to be improved but may also apply to subcontractors. *Bird v. Pan W. Corp.*, 261 Ark. 56, 546 S.W.2d 417 (1977).

Cited: *Airport Constr. & Materials, Inc. v. Bivens*, 279 Ark. 161, 649 S.W.2d 830 (1983); *Arkansas Contractors Licensing Bd. v. Butler Constr. Co.*, 295 Ark. 223, 748 S.W.2d 129 (1988); *Johnson v. Southern Elec., Inc.*, 29 Ark. App. 160, 779 S.W.2d 190 (1989).

17-25-102. Exemptions.

The following shall be exempted from the provisions of this chapter:

(1) The practice of contracting as defined in § 17-25-101 by an authorized representative or representatives of the United States Government, State of Arkansas, incorporated town, city or county, or other political subdivision in this state;

(2) Architects and engineers, whose only financial interest in a project shall be the architectural or engineering fees for preparing plans, specifications, surveys, and supervision that is customarily furnished by architects and engineers; and

(3)(A) Manufacturers who produce equipment to be installed in the State of Arkansas and have the responsibility for the installation of the equipment, which would require a license under this chapter, if the installation is performed by a contractor properly licensed under this chapter.

(B) The Contractors Licensing Board shall have the authority to define “manufacturers” as it is used in this subdivision (3).

History. Acts 1965, No. 150, §§ 1, 16; A.S.A. 1947, §§ 71-701, 71-715; Acts 2001, 1967, No. 142, § 1; 1971, No. 397, § 1; No. 583, § 1.
1977, No. 684, § 1; 1979, No. 1020, § 1;

CASE NOTES

Cited: Williams v. Joyner-Cranford- Inc. v. Cooper, 360 Ark. 164, 200 S.W.3d
Burke Constr. Co., 285 Ark. 134, 685 399 (2004).
S.W.2d 503 (1985); Meadow Lake Farms,

17-25-103. Penalties — Enforcement.

(a) Any contractor shall be deemed guilty of a misdemeanor and shall be liable to a fine of not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200) for each offense, with each day to constitute a separate offense, who:

(1)(A) For a fixed price, commission, fee, or wage attempts to or submits a bid or bids to construct or demolish or contracts to construct or demolish, or undertakes to construct or demolish, or assumes charge in a supervisory capacity or otherwise, or manages the construction, erection, alteration, demolition, or repair of, or has constructed, erected, altered, demolished, or repaired, under his or her or its direction, any building, apartment, condominium, highway, sewer, utility, grading, or any other improvement or structure, when the cost of the work to be done, or done, in the State of Arkansas by the contractor, including, but not limited to, labor and materials, is twenty thousand dollars (\$20,000) or more, without first having procured a license with the proper classification to engage in the business of contracting in this state.

(B) Subdivision (a)(1) of this section shall not apply to any demolition work or other work necessary to clean up a natural disaster within seventy-two (72) hours following the natural disaster;

(2) Shall present or file the license certificate of another;
(3) Shall give false or forged evidence of any kind to the Contractors Licensing Board or any member thereof in obtaining a certificate of license;

(4) Shall impersonate another; or

(5) Shall use an expired or revoked certificate of license.

(b) The doing of any act or thing herein prohibited by any applicant or licensee shall, in the discretion of the board, constitute sufficient grounds to refuse a license to an applicant or to revoke the license of a licensee.

(c) Regarding any violation of this chapter, the board shall have the power to issue subpoenas and bring before the board as a witness any person in the state and may require the witness to bring with him or her any book, writing, or other thing under his or her control which he or she is bound by law to produce in evidence.

(d) No action may be brought either at law or in equity to enforce any provision of any contract entered into in violation of this chapter. No action may be brought either at law or in equity for quantum meruit by any contractor in violation of this chapter.

(e)(1)(A) Any contractor who, after notice and hearing, is found by the board to have violated or used a contractor in violation of this chapter shall pay to the board a civil penalty of not less than one hundred dollars (\$100) nor more than four hundred dollars (\$400) per day for the activity. However, the penalty shall not exceed three percent (3%) of the total project being performed by the contractor.

(B)(i) The penalty provided for in this chapter plus interest at ten percent (10%) per annum shall be paid to the board before the contractor can be issued a license to engage in the business of contracting in this state.

(ii) In addition to the assessment of the penalty, the board, upon a finding of a violation of this chapter, may issue an order of abatement directing the contractor to cease all actions constituting a violation of this chapter.

(2) The board shall have the power to withhold approval for up to six (6) months of any application from any person who, prior to approval of the application, has been found in violation of this chapter.

(3) All hearings and appeals therefrom under this chapter shall be pursuant to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(4) No proceedings under this chapter may be commenced by the board after three (3) years from the date on which the act or omission which is the basis for the proceeding occurred.

(5) The board shall have the power to file suit in the Pulaski County Circuit Court to obtain a judgment for the amount of any penalty not paid within thirty (30) days of service on the contractor of the order assessing the penalty, unless the circuit court enters a stay pursuant to the provisions of this chapter.

(6)(A) The board shall have the power to file suit in the Pulaski County Circuit Court to enforce any order of abatement not complied

with within fifteen (15) days, excluding Saturdays, Sundays, and legal holidays, of service on the contractor of the order of abatement.

(B) If the circuit court finds the order of abatement to have been properly issued, it may enforce the order by any means by which injunctions are ordinarily enforced.

(C) However, nothing shall be construed herein to diminish the contractor's right to appeal and obtain a stay pursuant to the procedures provided for in this chapter.

History. Acts 1965, No. 150, § 14; 1985, No. 180, § 4; A.S.A. 1947, § 71-713; Acts 1987, No. 495, § 3; 1989, No. 795, § 2; 1999, No. 43, § 1; 2007, No. 275, § 2.

Amendments. The 2007 amendment

added (a)(1)(B) and made related changes; and in (a)(1)(A), inserted "or demolish" three times and inserted "demolition" and "demolished."

CASE NOTES

ANALYSIS

Construction.
Applicability.
Cost of Contract.
Enforceability.
Fraudulent Inducement.
Jurisdiction.
Liens.
Subcontractors.

Construction.

Code provisions imposing penalties for noncompliance with licensing requirements, such as § 17-22-101 (now 17-25-101) and this section, must be strictly construed. *Wilcox v. Safley*, 298 Ark. 159, 766 S.W.2d 12 (1989).

Applicability.

The 1989 amendment to (d) was not applied retroactively to bar plaintiffs recovery under theory of quantum meruit where plaintiff, a subcontractor, had a vested right to file claim against general contractor under theory of quantum meruit and language of act did not unequivocally require retroactive application. *Woodhaven Homes, Inc. v. Kennedy Sheet Metal Co.*, 304 Ark. 415, 803 S.W.2d 508 (1991).

Cost of Contract.

Unlicensed subcontractor could not bring a cause of action for breach of contract. *Williams v. Joyner-Cranford-Burke Constr. Co.*, 285 Ark. 134, 685 S.W.2d 503 (1985).

Enforceability.

Former provision that no action prohibiting enforcement of any provision of a contract entered into in violation of licensing statute could be brought meant that no action could be brought by an unlicensed contractor; but even if the clause were applicable to both parties, the prohibition of the clause went solely to the remedy of the parties and not to the inherent validity of the contract itself. *Ottinger v. Blackwell*, 173 F. Supp. 817 (E.D. Ark. 1959) (decision under prior law).

The mere fact that former similar statute made it a misdemeanor to contract to construct without a license did not make a contract awarded to an unlicensed contractor illegal. *Ottinger v. Blackwell*, 173 F. Supp. 817 (E.D. Ark. 1959) (decision under prior law).

Fraudulent Inducement.

Subcontractor's claim against a contractor for fraudulent inducement was barred by subsection (d) of this section. Although that section did not specifically preclude fraudulent inducement claims, the subcontractor's claim was intrinsically founded on, and intertwined with, the facts surrounding the underlying contract. *Meyer v. CDI Contrs., LLC*, 102 Ark. App. 290, 284 S.W.3d 530 (2008).

Jurisdiction.

This section does not present a question of jurisdiction pursuant to subsection (d); a party may be provided an affirmative defense to such an action, but the jurisdic-

tion of the court is not affected. *Sisson v. Ragland*, 294 Ark. 629, 745 S.W.2d 620 (1988).

Liens.

A contractor, within the meaning of § 17-22-101 (now 17-25-101), who was not licensed was not entitled to a mechanic's and materialman's lien. *Davidson v. Smith*, 258 Ark. 969, 530 S.W.2d 356 (1975).

Subcontractors.

The licensing requirement of this section is not limited to corporations which

contract directly with the owner of the property to be improved but includes subcontractors for construction of a portion of a building or an integral part thereof. *Bird v. Pan W. Corp.*, 261 Ark. 56, 546 S.W.2d 417 (1977).

Cited: *Arkansas Contractors Licensing Bd. v. F & F Concrete Prods., Inc.*, 297 Ark. 508, 763 S.W.2d 86 (1989); *Meadow Lake Farms, Inc. v. Cooper*, 360 Ark. 164, 200 S.W.3d 399 (2004).

17-25-104. Injunction.

When any contractor not licensed by the Contractors Licensing Board shall engage or attempt to engage in the business of contracting as herein defined, the board shall have the right to go into the proper court in the jurisdiction in which the work is being performed and, upon affidavit, secure a writ of injunction, without bond, restraining and prohibiting the contractor from performance of the work then being done or about to commence.

History. Acts 1965, No. 150, § 18; A.S.A. 1947, § 71-717.

17-25-105. Form of indictment.

In all prosecutions for violations of the provisions of this chapter for engaging in the business of contracting without a certificate of authority, it shall be sufficient to allege in the indictment, affidavit, or complaint that "A. unlawfully engaged in business as a contractor, without authority from the Contractors Licensing Board, State of Arkansas, to do so."

History. Acts 1965, No. 150, § 15; A.S.A. 1947, § 71-714.

17-25-106. [Repealed.]

Publisher's Notes. This section, concerning exemption for construction of grain bins, was repealed by Acts 2003, No.

1346, § 1. The section was derived from Acts 1993, No. 856, § 1.

SUBCHAPTER 2 — CONTRACTORS LICENSING BOARD

SECTION.

- 17-25-201. Creation — Members.
- 17-25-202. Organization and functions.
- 17-25-203. Powers.

SECTION.

- 17-25-204. Employees.
- 17-25-205. Disposition of funds.
- 17-25-206. Records and reports.

Effective Dates. Acts 1965, No. 150, § 23: Mar. 9, 1965. Emergency clause provided: "It has been found and is declared by the General Assembly that the statutes regulating the practice of contracting are outmoded and in many particulars impossible to administer without great prejudice to contractors and the public; that there is an urgent need to amend these statutes throughout in order to establish a fair and workable system of regulation; and that enactment of this measure will provide an appropriate remedy. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in force from the date of its approval."

Acts 1981, No. 717, § 3: Mar. 25, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that regulatory boards and commissions covered by Acts 1977, No. 113 exist for the singular purpose of protecting the public health and welfare; that it is necessary and proper that the public be represented on such boards and commissions; that the operations of such boards and commissions have a profound effect on the daily lives of all Arkansans; and that the public's voice should not be muted on any question coming before such public bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 131, § 6 and No. 135, § 6: Feb. 10, 1983. Emergency clauses provided: "It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as to questions coming before such bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health

and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 180, § 8: Feb. 22, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the per diem received by members of the Contractors Licensing Board is inadequate to compensate members of said board for the time required to administer the duties of the board under the provisions of the Contractors Licensing Law; that the duties of the Contractors Licensing Board as now provided by law are in need of revision and clarification in order to strengthen the ability of the board to protect the interest of the public with respect to the qualifications and duties of licensed contractors in this state; and that the immediate passage of this act is necessary to accomplish such purposes. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 795, § 6: Mar. 21, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the per diem received by members of the Contractors Licensing Board is inadequate to compensate members of the Board for the time required to administer the duties of the Board under the provisions of the Contractors Licensing Law; that the provisions of the Contractors Licensing Law are in need of revision and clarification in order to strengthen the ability of the Board and to protect the interest of the public with respect to the qualifications and duties of licensed contractors in the state; and that the immediate passage of this act is necessary to accomplish such purposes. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends

various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the

Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

CASE NOTES

Suits Against.

The duties and authority of the Arkansas State Contractors Licensing Board, as set out in this subchapter, clearly indicate that the board is but the alter ego of the state itself, and it is a fundamental principle of constitutional law that, in the

absence of consent, a federal court suit in which the state or one of its agencies or departments is named as the defendant is prohibited by the Eleventh Amendment. *Harvey v. Williams*, 680 F. Supp. 318 (E.D. Ark. 1988).

17-25-201. Creation — Members.

(a) There is created a Contractors Licensing Board, consisting of seven (7) members, who shall be appointed by the Governor.

(b)(1) Each member shall be at least thirty-five (35) years of age and must have been a resident of the State of Arkansas for the previous five (5) years.

(2)(A) Five (5) members shall be contractors of not fewer than ten (10) years' experience in responsible charge of construction projects of a magnitude consistent with the duties of their offices. Each must hold an unexpired contractor's license issued under this chapter. Each must, at the time of appointment, maintain his or her principal place of business in Arkansas.

(B) At least one (1) member of the board shall have had as a larger part of his or her business the construction of sewers and water-works.

(C) At least one (1) member of the board shall have had as a larger part of his or her business the construction of buildings.

(D) At least one (1) member of the board shall have had as a larger part of his or her business the construction of highways.

(3) Two (2) members of the board shall not be actively engaged in or retired from the profession of contracting. One (1) shall represent consumers, and one (1) shall be sixty (60) years of age or older and shall represent the elderly. Both shall be appointed from the state at large subject to confirmation by the Senate. The two (2) positions may not be held by the same person. Both shall be full voting members but shall not participate in the grading of examinations.

(c)(1) Members shall serve five-year terms.

(2) Terms shall expire on December 31 of the fifth year.

(3) Each member shall hold over after the expiration of his or her term until his or her successor shall be duly appointed and qualified.

(4) If a vacancy shall occur in the board for any cause, it shall be filled by appointment by the Governor.

(5) The Governor may remove any member of the board at any time for misconduct, incompetency, or neglect of duty.

(d) Each member of the board shall receive a certificate of appointment from the Governor and, before entering upon the discharge of the duties of his or her office, shall file with the Secretary of State the constitutional oath of office.

(e) Each member of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1965, No. 150, §§ 2, 3, 6; 1969, No. 293, § 1; 1973, No. 293, § 1; 1977, No. 113, §§ 1-3; 1981, No. 717, § 2; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; 1985, No. 180, § 2; A.S.A. 1947, §§ 6-617 — 6-619, 6-623 — 6-626, 71-702, 71-703, 71-706; Acts 1989, No. 487, § 6; 1989, No. 795, § 1; 1997, No. 250, § 132.

Publisher's Notes. The terms of the members of the Contractors Licensing

Board, other than the representatives of consumers and the elderly, are arranged so that one term expires every year.

Acts 1981, No. 717, § 1, provided that the purpose of the act was to provide consumer representatives on state boards and commissions affected by Acts 1977, No. 113 full voting authority as board members.

17-25-202. Organization and functions.

(a) The Contractors Licensing Board shall elect a chair, vice chair, and secretary, each to serve in his or her respective capacity for one (1) year. Officers shall be elected by the board annually.

(b) The board shall have two (2) regular meetings in each year. One (1) meeting shall be in the month of February, and one (1) meeting shall be in the month of August, for the purpose of transacting such business as may properly come before it, on call of the Chair of the Contractors Licensing Board.

(c) Special or adjourned meetings may be held at such times as the board may provide by the bylaws which it shall adopt, or at such times as the board may, by reasonable resolution, provide.

(d) Due notice of each meeting and the time and place thereof shall be given to each member in such manner as the bylaws shall provide.

(e) Three (3) members of the board shall constitute a quorum.

(f) The board shall adopt a seal for its own use and shall have on it the words, "Contractors Licensing Board, State of Arkansas, Seal", and the secretary shall have charge and custody of it.

History. Acts 1965, No. 150, § 4; 1979, No. 1020, § 2; A.S.A. 1947, § 71-704.

17-25-203. Powers.

(a) The Contractors Licensing Board shall have power to make such bylaws, rules, and regulations for its operation as it shall consider appropriate, provided that they are not in conflict with the laws of the State of Arkansas.

(b) All expenses incurred by the board for the administration of this chapter are authorized to be paid by the board.

(c) The board, or any committee thereof, shall be entitled to the services of the Attorney General or other state legal counsel as deemed appropriate, in connection with the operation of the affairs of the board. Additional legal counsel may be employed by the board from time to time as it may deem necessary.

History. Acts 1965, No. 150, §§ 3, 4, 6; 1979, No. 1020, § 2; 1985, No. 180, § 2; 1969, No. 293, § 1; 1973, No. 293, § 1; A.S.A. 1947, §§ 71-703, 71-704, 71-706.

17-25-204. Employees.

The Contractors Licensing Board shall employ a chief administrative employee, also known as administrator, who shall possess such qualifications as may be determined by the board and who shall serve at the pleasure of the board. In addition, the board may employ such additional professional and clerical employees as may be necessary for the operation of the board and its various functions and pay salaries thereto as may be authorized by law.

History. Acts 1965, No. 150, § 6; 1969, No. 293, § 1; 1973, No. 293, § 1; 1985, No. 180, § 2; A.S.A. 1947, § 71-706.

17-25-205. Disposition of funds.

The fees of the Contractors Licensing Board shall be deposited into banks to be used by the board in the manner prescribed by law, similar to the accounts of other examining and licensing boards of the state, and shall be audited under rules and regulations prescribed by the Director of the Department of Finance and Administration.

History. Acts 1965, No. 150, § 5; A.S.A. 1947, § 71-705.

17-25-206. Records and reports.

(a) The Secretary of the Contractors Licensing Board shall keep a record of the proceedings of the Contractors Licensing Board.

(b) The secretary shall keep a register of all applications for license showing for each:

(1) The date of application, name, qualification, place of business, and place of residence;

(2) Whether the license was granted or refused; and

(3) A complete transcript of the proceedings, including evidence submitted by applicants, licensees, the board, or otherwise, at any hearing.

(c) The books and register of this board, including transcripts of proceedings, shall be prima facie evidence of all matters recorded therein. A certified copy of such books or register, including a transcript of proceedings, under the seal of the board and attested by its secretary, shall be received in evidence in all courts of the state in lieu of the original.

(d) A roster showing the names and places of business and of residence of all licensed contractors shall be prepared annually by the secretary of the board.

(e) On or before August 1 of each year, the board shall submit to the Governor a report of its transactions for the preceding year and shall file with the Secretary of State a copy of the report, together with a complete statement of receipts and expenditures of the board attested by the affidavit of the chair and secretary and a copy of the roster of licensed contractors.

(f) A record shall be made and preserved by the board of each examination of applicant or licensee. The findings of the board thereon and a certified copy of the record shall be furnished to any applicant or licensee desiring to appeal from the findings of the board, as provided in § 17-25-312, upon payment of the costs of transcribing the record.

History. Acts 1965, No. 150, §§ 5, 7, 9;
A.S.A. 1947, §§ 71-705, 71-707, 71-709;
Acts 1999, No. 43, § 2.

SUBCHAPTER 3 — LICENSING

SECTION.

- 17-25-301. Significance — Proof.
- 17-25-302. Limitations.
- 17-25-303. Application — Renewal — Fees.
- 17-25-304. Financial statement.
- 17-25-305. Applicant qualifications.
- 17-25-306. Examinations — Certification.
- 17-25-307. Expiration.
- 17-25-308. Grounds for revocation.
- 17-25-309. Procedure for revocation — Reissuance.

SECTION.

- 17-25-310. Replacement.
- 17-25-311. Corporations and partnerships — Unlawful acts.
- 17-25-312. Review.
- 17-25-313. License requirements to accompany invitation to bid.
- 17-25-314. [Repealed.]
- 17-25-315. Rules and regulations — Federally funded projects — Contractor qualifications.
- 17-25-316. Workers' compensation coverage required.

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Effective Dates. Acts 1965, No. 150, § 23: Mar. 9, 1965. Emergency clause provided: "It has been found and is declared

by the General Assembly that the statutes regulating the practice of contracting are outmoded and in many particulars impossible to administer without great prejudice to contractors and the public; that there is an urgent need to amend these

statutes throughout in order to establish a fair and workable system of regulation; and that enactment of this measure will provide an appropriate remedy. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall take effect and be in force from the date of its approval."

Acts 1971, No. 546, § 4: Apr. 6, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that greater flexibility is required in the establishment of fees to be charged by the Contractors Licensing Board for examination, issuance and renewal of contractors' licenses to enable said board to provide for the efficient regulation of licensed contractors and that the immediate passage of this act is necessary to accomplish the aforementioned purposes. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 180, § 8: Feb. 22, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the per diem received by members of the Contractors Licensing Board is inadequate to compensate members of said board for the time required to administer the duties of the board under the provisions of the Contractors Licensing Law; that the duties of the Con-

tors Licensing Board as now provided by law are in need of revision and clarification in order to strengthen the ability of the board to protect the interest of the public with respect to the qualifications and duties of licensed contractors in this state; and that the immediate passage of this act is necessary to accomplish such purposes. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 335, § 6: Mar. 3, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that greater flexibility is required in the issuance of contractors' licenses to enable the Contractors Licensing Board to provide for the efficient regulation of licensed contractors and that the immediate passage of this act is necessary to accomplish the purposes of this act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

ALR. Building and construction artisan or contractor: failure to procure business or occupational license as affecting en-

forceability of contract or right of recovery for work done. 44 A.L.R.4th 271.

17-25-301. Significance — Proof.

(a) The issuance of a certificate of license by the Contractors Licensing Board shall be evidence that the person, firm, or corporation named therein is entitled to all of the rights and privileges of a licensed contractor while the license remains unrevoked or unexpired.

(b)(1) Upon making application to the building inspector or other authority of any incorporated city or town in Arkansas charged with the duty of issuing building or other permits for the construction of any building, apartment, condominium, utility, highway, sewer, grading, or

any other improvement or structure, when the cost of the work to be done by the contractor, but not limited to labor and materials, is twenty thousand dollars (\$20,000) or more, any person, firm, or corporation, before being entitled to the issuance of such permits, shall furnish satisfactory proof to the inspector or authority that he or she is duly licensed under the terms of this chapter.

(2) It shall be unlawful for the building inspector or other authority to issue or allow the issuance of a building permit unless and until the applicant has furnished evidence that he or she is either exempt from the provisions of this chapter or is duly licensed under this chapter to carry out or superintend the work for which the permit has been applied.

History. Acts 1965, No. 150, § 13; A.S.A. 1947, § 71-712; Acts 1987, No. 495, § 2.

CASE NOTES

Cited: Urey Ceramic Tile Co. v. Mosley, 304 Ark. 711, 805 S.W.2d 54 (1991).

17-25-302. Limitations.

The Contractors Licensing Board shall have power to limit by proper classification the license to the character of work for which the applicant is qualified.

History. Acts 1965, No. 150, § 10; A.S.A. 1947, § 71-710; Acts 1999, No. 43, § 3.

17-25-303. Application — Renewal — Fees.

(a)(1)(A) Any person desiring to be licensed as a contractor in this state shall make and file with the Contractors Licensing Board thirty (30) days prior to any regular or special meeting thereof, a written application on a form as may then be prescribed by the board, for examination by the board.

(B) The application shall be accompanied by payment in a sum to be determined by the board, but not to exceed one hundred dollars (\$100) to the board.

(2) The thirty-day requirement may be waived by the board provided that the contractor has on file with the board a completed original application and proof of having successfully completed any examination required.

(b) Thereafter, an annual renewal license fee to be determined by the board but not to exceed one hundred dollars (\$100) shall be paid by each licensee to defray the costs and expenses of the administration of this chapter.

History. Acts 1965, No. 150, § 8; 1971, No. 180, § 3; A.S.A. 1947, § 71-708; Acts No. 546, § 1; 1979, No. 1020, § 3; 1985, 1997, No. 335, § 1.

17-25-304. Financial statement.

(a)(1) All persons and entities required by this chapter to be licensed by the Contractors Licensing Board shall transmit to the board with their original applications an audited financial statement of the applicant audited by a certified public accountant or registered public accountant.

(2) All persons and entities licensed by the board shall transmit to the board with renewal applications a financial statement of the applicant reviewed by a certified public accountant or registered public accountant according to American Institute of Certified Public Accountants' Professional Standards.

(b) The financial statement so furnished shall not be public information and may not be made available for inspection by any person, unless pursuant to an order of a court of competent jurisdiction. After the contractor is licensed, the board shall have the option of destroying the financial statement by the process of shredding or returning the financial statement to the contractor.

History. Acts 1981, No. 275, § 1; A.S.A. 1947, § 71-708.1; Acts 1997, No. 378, § 1.

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Access to Public Records Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 741.

17-25-305. Applicant qualifications.

(a) The Contractors Licensing Board, in determining the qualifications of any applicant for an original license or any renewal license, shall, among other things, consider the following:

- (1) Experience;
- (2) Ability;
- (3) Character;
- (4) The manner of performance of previous contracts;
- (5) Financial condition;
- (6) Equipment;
- (7) Any other fact tending to show ability and willingness to conserve the public health and safety; and
- (8) Default in complying with the provisions of this chapter or any other law of the state.

(b) The board may develop reciprocal agreements with other states with similar licensing responsibilities.

History. Acts 1965, No. 150, § 9; A.S.A. 1947, § 71-709; Acts 1997, No. 335, § 2.

CASE NOTES

Construction with § 17-25-308.

Section 17-25-308, which details the requirements for revocation of a contractor's license, provides the only reasons the board may revoke a contractor's license and does not state that they may be used to determine if misconduct had occurred

when considering revocation; this section and § 17-25-308 contain different provisions and requirements for different circumstances and may not be applied interchangeably. *Arkansas Contractors Licensing Bd. v. Pegasus Renovation Co.*, 347 Ark. 320, 64 S.W.3d 241 (2001).

17-25-306. Examinations — Certification.

(a) Any person desiring to apply for a license shall be permitted to take an examination to determine the applicant's qualifications.

(b) If the result of the examination of any applicant shall be satisfactory to the Contractors Licensing Board, and if the application complies with the board's rules and regulations, then the board shall issue to the applicant a certificate to engage in contracting in the State of Arkansas.

(c) Anyone failing to pass the examination may be reexamined at any regular meeting of the board upon payment of the regular fee.

History. Acts 1965, No. 150, § 8; 1971, No. 180, § 3; A.S.A. 1947, § 71-708; Acts No. 546, § 1; 1979, No. 1020, § 3; 1985, 2001, No. 583, § 2.

17-25-307. Expiration.

All certificates of license to engage in the business of contracting in the State of Arkansas shall expire at 12:00 midnight on the day before the anniversary date of their issuance unless otherwise designated by the Contractors Licensing Board, and they shall become invalid on that day unless renewed.

History. Acts 1965, No. 150, § 8; 1971, No. 546, § 1; 1979, No. 1020, § 3; 1985, No. 180, § 3; A.S.A. 1947, § 71-708.

17-25-308. Grounds for revocation.

(a) The Contractors Licensing Board may revoke the certificate of license of any contractor licensed under this chapter who is found guilty of any fraud or deceit in obtaining a license or for aiding or abetting any contractor or person to violate the provisions of this chapter or for gross negligence, incompetence, or misconduct in the conduct of the contractor's business.

(b) The board may revoke the certificate of license of a contractor licensed under this chapter who fails to obtain or maintain worker's compensation coverage as required under the Workers' Compensation Law, § 11-9-101 et seq., and § 17-25-514.

History. Acts 1965, No. 150, § 12; A.S.A. 1947, § 71-711; Acts 2009, No. 327, § 4.

Amendments. The 2009 amendment

inserted (b), redesignated the remaining text accordingly, and made a minor stylistic change.

CASE NOTES

Construction with § 17-25-305.

This section provides the only reasons the board may revoke a contractor's license and does not state that they may be used to determine if misconduct had occurred when considering revocation; this section and § 17-25-305 contain different provisions and requirements for different

circumstances and may not be applied interchangeably. *Arkansas Contractors Licensing Bd. v. Pegasus Renovation Co.*, 347 Ark. 320, 64 S.W.3d 241 (2001).

Cited: *Mid-South Rd. Bldrs., Inc. v. Arkansas Contractors Licensing Bd.*, 328 Ark. 630, 946 S.W.2d 649 (1997).

17-25-309. Procedure for revocation — Reissuance.

(a) Any person may prefer charges in connection with the foregoing against any contractor licensed under this chapter.

(b) The charges shall be in writing and sworn to by the complainant and mailed to the Contractors Licensing Board and, unless dismissed without hearing by the board as unfounded or trivial, shall be heard and determined by the board.

(c) A time and place for the hearing shall be fixed by the board, and the hearing shall be held in the State of Arkansas.

(d) A copy of the charges, together with the notice of the time and place of hearing, shall be considered as legally served by the board when sent to the last known address of the accused by certified mail at least ten (10) days before the date fixed for the hearing. In the event that such service cannot be effected ten (10) days before the hearing, then the date of hearing and determination shall be postponed as may be necessary to permit the carrying out of this condition.

(e) At the hearing the accused contractor shall have the right to appear personally and by counsel and to cross-examine witnesses and to submit evidence in the contractor's behalf and defense.

(f) If after the hearing the board finds the facts as alleged and of such character as to disqualify the contractor, then the board shall revoke the license of the contractor, but in that event no refund shall be made of the license fee.

(g) Within its discretion and upon proper application or hearing, the board may reissue a license to any contractor whose license has been revoked.

History. Acts 1965, No. 150, § 12; A.S.A. 1947, § 71-711; Acts 1999, No. 43, § 4; 2003, No. 91, § 1.

17-25-310. Replacement.

A certificate of license to replace any lost, destroyed, or mutilated certificate may be issued subject to the rules and regulations of the Contractors Licensing Board.

History. Acts 1965, No. 150, § 12; A.S.A. 1947, § 71-711.

17-25-311. Corporations and partnerships — Unlawful acts.

(a) A corporation or partnership may engage in the business of contracting when licensed by the Contractors Licensing Board.

(b) It shall be unlawful and a violation of this chapter for any two (2) or more contractors, whether doing business as individuals, partnerships, corporations, or other organizations, to jointly submit a bid or enter into a contract for construction as a joint venture unless all parties to the joint venture are licensed pursuant to this chapter.

(c) Any combination of contractors other than a joint venture shall obtain a license for the combination prior to submitting a bid.

History. Acts 1965, No. 150, § 17; 1985, No. 180, § 5; A.S.A. 1947, § 71-716.

17-25-312. Review.

Any party aggrieved by any decision of the Contractors Licensing Board shall have the right to seek review thereof pursuant to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1965, No. 150, § 20; A.S.A. 1947, § 71-719.

RESEARCH REFERENCES

Ark. L. Rev. Judicial Review of Administrative Agencies in Arkansas, 25 Ark. L. Rev. 397.

CASE NOTES

Cited: Brown v. Arkansas State Heat- frigeration Licensing Bd., 336 Ark. 34, 984 ing, Ventilation, Air Conditioning & Re- S.W.2d 402 (1999).

17-25-313. License requirements to accompany invitation to bid.

All architects and engineers preparing plans and specifications for work to be contracted in the State of Arkansas shall include in their invitation to bidders and in their specifications a copy of this chapter or such portions thereof as are deemed necessary to convey to the invited bidder, whether he or she is a resident of this state or not, the

information that it will be necessary for him or her to have a certificate of license with the proper classification from the Contractors Licensing Board before his or her bid is submitted.

History. Acts 1965, No. 150, § 19; A.S.A. 1947, § 71-718; Acts 1999, No. 43, § 5.

CASE NOTES

In General.

The statute does not state that the bid of a party that does not have a contractor's license at the time of submission is void.

Quality Fixtures, Inc. v. Multi-Purpose Facilities Bd., 337 Ark. 115, 986 S.W.2d 865 (1999).

17-25-314. [Repealed.]

Publisher's Notes. This section, concerning bonds for out-of-state contractors, was repealed by Acts 1987, No. 162, § 7.

The section was derived from Acts 1967, No. 174, §§ 1-3; A.S.A. 1947, §§ 71-721 — 71-723.

17-25-315. Rules and regulations — Federally funded projects — Contractor qualifications.

(a)(1) The Contractors Licensing Board shall have the power to promulgate rules and regulations for the efficient enforcement of this chapter and shall also have the power to assign the right or give permission to any state agency, board, or commission to determine qualifications of a contractor solely for the purpose of submitting a bid to the state agency, board, or commission on projects involving federal aid funds prior to the contractor's being licensed by the board.

(2) No state agency, board, or commission shall execute any construction contract involving federal aid funds unless and until the successful bidder for the project furnishes a certificate of license issued by the board.

(b)(1) The board shall have the power to provide by regulation for any political subdivision or other political corporation to accept bids from unlicensed contractors for projects involving federal funds.

(2) However, no contractor shall submit a bid under this section prior to submitting application for licensure, and no political subdivision or political corporation shall execute any construction contract unless and until the successful bidder for the project furnishes an appropriate license issued by the board.

History. Acts 1965, No. 150, § 11; 1985, No. 180, § 6; A.S.A. 1947, § 71-720.

17-25-316. Workers' compensation coverage required.

(a) A contractor required to be licensed by the Contractors Licensing Board shall obtain and maintain workers' compensation coverage as required under the Workers' Compensation Law, § 11-9-101 et seq.

(b) The board shall require proof of current workers' compensation coverage before issuing or renewing a license to a contractor required to have workers' compensation coverage under the Workers' Compensation Law, § 11-9-101 et seq.

(c)(1) If a contractor fails to maintain workers' compensation coverage or fails to maintain proof of current workers' compensation coverage on file with the board, the board may revoke or suspend the contractor's license.

(2) A contractor's license that has been revoked or suspended due to failure to maintain workers' compensation coverage may be reinstated upon receipt by the board of proof that the contractor has secured workers' compensation coverage.

(d) The board shall promulgate rules necessary to enforce this section.

History. Acts 2009, No. 327, § 5.

SUBCHAPTER 4 — CONTRACTORS' BONDS

SECTION.

17-25-401. Definition.

17-25-402. Expenses — Disposition of funds.

17-25-403. Liability of customer.

17-25-404. Bond — Filing — Terms.

17-25-405. [Repealed.]

SECTION.

17-25-406. Notice of bond cancellation.

17-25-407. [Repealed.]

17-25-408. Failure to comply — Penalties — Enforcement.

17-25-409. Proceedings upon violation.

A.C.R.C. Notes. References to "this chapter" in subchapters 1-3 may not apply to this subchapter which was enacted subsequently.

Cross References. Water well constructors, § 17-50-101 et seq.

Effective Dates. Acts 1989, No. 487, § 12: Mar. 10, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present law pertaining to non-resident contractors is insufficient; that this act corrects deficiencies in the law; and that this act should become effective immediately to provide for the adequate protection of the public. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1992 (1st Ex. Sess.), No. 37, § 8: Mar. 11, 1992. Emergency clause provided: "It is hereby found and determined

by the Seventy-Eighth General Assembly of the State of Arkansas meeting in the First Extraordinary Session of 1992 that the changes in bonding requirements for licensed contractors in Arkansas made by Act 783 of 1991 have placed a significant burden on all contractors, that this additional bond requirement has adversely affected the contracting and construction business the State of Arkansas by increasing their costs, and therefore changes must be made in these new bonding requirements to relieve this costly burden on the construction business in Arkansas. Therefore, in order to remedy this significant cost burden on the construction industry, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 2005, No. 187, § 2: Feb. 17, 2005. Emergency clause provided: "It is found and determined by the General Assembly

that current law applicable to the Contractors Licensing Board does not specify that financial obligations under § 17-25-403 are to include civil penalties imposed by the board; and that the effective operation of the board requires that financial obligations under § 17-25-403 include civil penalties. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of

the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

RESEARCH REFERENCES

ALR. State or local government’s liability to subcontractors, laborers, or mate-

rialmen for failure to require general contractor to post bond. 54 A.L.R.5th 649.

17-25-401. Definition.

(a)(1) “Contractor” shall include all original, prime, and general contractors and all subcontractors. It is defined to be any person, firm, joint venture, partnership, copartnership, association, corporation, or other organization engaged in the business of the construction, alteration, dismantling, demolition, or repairing of roads, bridges, viaducts, sewers, water and gas mains, streets, disposal plants, water filters, tanks, towers, airports, buildings, dams, levees, canals, railways and rail facilities, oil and gas wells, water wells, pipelines, refineries, industrial or processing plants, chemical plants, power plants, electric, telephone, or any other type of energy or message transmission lines or equipment, or any other kind of improvement or structure.

(2) The term “contractor” shall include any contractor who is required to obtain a contractor’s license under the state licensing law of this state, § 17-25-101 et seq.

(b) However, when a person or entity acts as a contractor in the construction, erection, alteration, or repair of his or her own or its own property or of a single-family residence, or if the cost of the work to be done, including, but not limited to, labor and materials, is less than twenty thousand dollars (\$20,000), the person or entity shall not be deemed a contractor under this chapter.

History. Acts 1987, No. 162, § 1; 1989, No. 487, § 1; 1991, No. 783, § 1.

17-25-402. Expenses — Disposition of funds.

(a) All expenses incurred by the Contractors Licensing Board for the administration of this subchapter are authorized to be paid by the board.

(b)(1) All taxes, premiums, contributions, penalties, interest, and fines collected pursuant to this subchapter, except enforcement penalties, shall be distributed pro rata, based upon the amount of taxes,

premiums, and contributions due to the Department of Finance and Administration, the Department of Workforce Services, the Workers' Compensation Commission, or any city, county, or school district, or any other state agency or other political subdivision of the state, first to the extent of any taxes, premiums, and contributions due with any remainder applied to interest, penalties, and fines, in that order.

(2) All enforcement penalties assessed to a contractor pursuant to the provisions of this subchapter shall be paid directly to the board to defer the cost of enforcement.

(c) The board may employ such additional professional and clerical employees as may be necessary and pay salaries thereto as authorized by law.

History. Acts 1989, No. 487, §§ 6, 9; 402, providing a penalty, was repealed by 1991, No. 783, § 2. Acts 1989, No. 487, § 8. The section was

Publisher's Notes. Former § 17-22- derived from Acts 1987, No. 162, § 6.

17-25-403. Liability of customer.

(a)(1) In the event the contractor fails to honor its financial obligations to the State of Arkansas or to any city, county, school district, state agency, or other political subdivision of the state, the customer for whom the work was being performed shall be responsible for all financial obligations of the contractor to the State of Arkansas or to any city, county, school district, state agency, or other political subdivision of the state, on that customer's project, provided that the customer receives written notice of the contractor's failure to comply with this subchapter prior to final payment to the contractor.

(2) The responsibility of the customer shall not exceed any amount owed to the contractor on or after the date the customer receives the written notice.

(3) The written notice shall be sent by certified mail, return receipt requested, and must include the maximum amount of all financial obligations the contractor may potentially owe to the State of Arkansas or to any city, county, school district, state agency, or other political subdivision of the state, arising from that customer's project.

(b)(1) As used in this section, "financial obligations" includes, but is not limited to, civil penalties imposed by the State of Arkansas or any city, county, school district, state agency, or other political subdivision of the state.

(2) Civil penalties imposed pursuant to §§ 17-25-103(e)(1)(A) and 17-25-408 for violations of the provisions of this chapter arise from and are connected to the customer's project, and the provisions of this section apply thereto.

History. Acts 1987, No. 162, § 2; 1989, Ex. Sess.), No. 37, § 1; 1999, No. 450, § 1; No. 487, § 2; 1991, No. 783, § 3; 1992 (1st 2005, No. 187, § 1.

Amendments. The 2005 amendment inserted the (a)(1) and (a)(3) designations; inserted (a)(2); inserted “shall be sent by

certified mail, return receipt requested, and” in present (a)(3); and added (b).

CASE NOTES

Civil Fines.

Trial court improperly ordered construction company to pay civil fines and penalties assessed against its contractor and subcontractors stemming from a failure of the contractors to obtain a contrac-

tor’s license and to be bonded; the statute did not include civil penalties as financial obligations owed to the state. *Cooper Realty Invs., Inc. v. Ark. Contrs. Licensing Bd.*, 355 Ark. 156, 134 S.W.3d 1 (2003).

17-25-404. Bond — Filing — Terms.

(a)(1) Before commencing work or undertaking to perform any services or duties in the state, a contractor shall file with the Contractors Licensing Board as the depository agency a surety bond of a surety authorized to do business in this state or a cash bond.

(2) The bond shall be a condition of licensure, and a contractor’s license shall not be released until the bond has been properly filed.

(b) The bond shall be:

(1) In a penal sum of ten thousand dollars (\$10,000);

(2) Payable to the State of Arkansas; and

(3) Conditioned on the contractor’s complying with the tax laws of the State of Arkansas and, when applicable, the ordinances, rules, and regulations of any city, county, school district, state agency, or other political subdivision of the state, the Department of Workforce Services Law, § 11-10-101 et seq., the Workers’ Compensation Law, § 11-9-101 et seq., and the provisions of this subchapter.

History. Acts 1987, No. 162, § 3; 1989, No. 487, § 3; 1991, No. 783, § 4; 1992 (1st Ex. Sess.), No. 37, § 2; 2005, No. 169, § 1.

Amendments. The 2005 amendment inserted “the ordinances, rules, and regulations of” in (b)(3).

CASE NOTES

Civil Fines.

Trial court improperly ordered construction company to pay civil fines and penalties assessed against its contractor and subcontractors stemming from a failure of the contractors to obtain a contrac-

tor’s license and to be bonded; the statute did not include civil penalties as financial obligations owed to the state. *Cooper Realty Invs., Inc. v. Ark. Contrs. Licensing Bd.*, 355 Ark. 156, 134 S.W.3d 1 (2003).

17-25-405. [Repealed.]

Publisher’s Notes. This section, concerning certification notice; exemption, was repealed by Acts 1992 (1st Ex. Sess.),

No. 37, § 7. The section was derived from Acts 1987, No. 162, § 3; 1989, No. 487, § 4; 1991, No. 783, § 5.

17-25-406. Notice of bond cancellation.

(a)(1) Notice of bond cancellation shall be given to the Contractors Licensing Board in writing sixty (60) days prior to cancellation. The board shall notify the Department of Finance and Administration, the Department of Workforce Services, and the Workers' Compensation Commission of the notice of cancellation.

(2) It shall be the responsibility of each governmental agency to make any claims against the bond in accordance with state law for collection of any taxes, premiums, contributions, penalties, interest, or fines within the statute of limitations of the appropriate state law.

(b) A contractor's license that has become invalid due to bond cancellation may be reinstated upon receipt of a proper replacement bond.

History. Acts 1987, No. 162, § 4; 1989, No. 487, § 5; 1991, No. 783, § 6; 1992 (1st Ex. Sess.), No. 37, § 3.

17-25-407. [Repealed.]

Publisher's Notes. This section, concerning release of bond; action on bond, was repealed by Acts 1992 (1st Ex. Sess.), No. 37, § 7. The section was derived from Acts 1987, No. 162, § 4; 1989, No. 487, § 6; 1991, No. 783, § 7.

17-25-408. Failure to comply — Penalties — Enforcement.

(a) The fact that a contractor is performing or has performed work in Arkansas and compliance as required by this subchapter has not been met shall constitute prima facie evidence of failure to comply.

(b) Upon notice to the contractor and a hearing thereon, if requested by the contractor or if deemed appropriate by the Contractors Licensing Board or any committee thereof, should it be determined that a violation exists, the board or committee may assess a penalty for noncompliance in a sum not to exceed five percent (5%) of the value of the contract performed, and upon a finding of a second or subsequent violation, the contractor may be assessed a penalty equal to ten percent (10%) of the value of the contract performed. Further, any contractor found in violation for a second or subsequent violation of this subchapter may lose its contractor's license for a period of one (1) year. The board or committee may also issue an order to cease and desist the work pending compliance.

(c) Failure of a contractor to comply with the provisions of this subchapter shall be grounds for revocation of any license issued to the contractor by the board.

(d) Enforcement of the bond filing requirements contained herein shall be the responsibility of the board.

(e) The board shall have the power to make such rules and regulations for enforcement as it may consider appropriate and not in conflict with Arkansas law.

History. Acts 1987, No. 162, § 5; 1989, No. 487, §§ 6, 7; 1991, No. 783, § 8; 1992 (1st Ex. Sess.), No. 37, § 4.

17-25-409. Proceedings upon violation.

(a) Regarding any violation of this subchapter, the Contractors Licensing Board shall have the power to issue subpoenas and bring before the board as a witness any person in the state and may require the witness to bring with him or her any book, writing, or other thing under his or her control which he or she is bound by law to produce in evidence.

(b) No proceedings under this section may be commenced by the board after three (3) years from the date on which the act or omission which is the basis for the proceeding occurred.

(c) The board shall have the power to file suit in the Pulaski County Circuit Court to enforce any cease and desist order not complied with within fifteen (15) days, excluding Saturdays, Sundays, and legal holidays, of service on the contractor of the order. If the circuit court finds the order to have been properly issued, it may enforce it by any means by which injunctions are ordinarily enforced. However, nothing shall be construed herein to diminish the contractor's right to appeal.

(d) All hearings and appeals therefrom under this section shall be pursuant to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1989, No. 487, § 7; 1991, No. 783, § 9.

SUBCHAPTER 5 — RESIDENTIAL BUILDING CONTRACTORS COMMITTEE

SECTION.

- 17-25-501. Purpose.
- 17-25-502. Definitions.
- 17-25-503. Committee established —
Members — Expenses —
Administrative support.
- 17-25-504. Authority.
- 17-25-505. License from committee re-
quired.
- 17-25-506. Application for license.
- 17-25-507. Applicant qualifications.
- 17-25-508. Name of licensed contractor.

SECTION.

- 17-25-509. Written examination.
- 17-25-510. Hearings regarding viola-
tions.
- 17-25-511. Appeal from committee deci-
sion.
- 17-25-512. Expiration of license — Fees.
- 17-25-513. Exemption for personal home-
builder.
- 17-25-514. Workers' compensation re-
quired.

A.C.R.C. Notes. References to "this chapter" in subchapters 1-3 may not apply to this subchapter which was enacted subsequently.

17-25-501. Purpose.

It is the intent of this subchapter to protect the purchasers of homes constructed in this state by establishing reasonable and adequate licensing and regulation of homebuilders. It is intended that this subchapter apply to everyone not specifically excluded. It is also the intent of this subchapter that the Residential Building Contractors Committee be located with the Contractors Licensing Board and that the staff and appropriation for the board be utilized to implement this subchapter.

History. Acts 1999, No. 950, § 1.

17-25-502. Definitions.

For purposes of this subchapter:

(1) "Committee" means the Residential Building Contractors Committee created by this subchapter;

(2) "Residential building contractor" means any person, firm, partnership, copartnership, association, corporation, or other organization or any combination thereof, which for a fixed price, commission, fee, or wage attempts to or submits a bid to construct or contract or undertakes to construct or assumes charge in a supervisory capacity or otherwise manages the construction of single family residences; and

(3) "Single family residence" means any project consisting of one (1) but not more than four (4) units of new construction for residential occupancy, when the cost of the project is twenty thousand dollars (\$20,000) or more. This definition does not apply to subcontractors of licensed residential building contractors or to remodeling operations.

History. Acts 1999, No. 950, § 1.

17-25-503. Committee established — Members — Expenses — Administrative support.

(a)(1) There is created the Residential Building Contractors Committee, to consist of seven (7) members.

(2)(A)(i) The Governor shall appoint five (5) persons, each of whom has at least five (5) years' experience in residential construction.

(ii) Two (2) of the five (5) residential construction members shall be appointed from a list of at least ten (10) names submitted by the statewide trade organization or organizations that represent the residential construction industry.

(iii) Of the five (5) residential construction members, one (1) member shall be appointed from each of the four (4) congressional districts, and the remaining member shall be appointed from the state at large.

(B)(i) Two (2) members of the committee shall not be actively engaged in or retired from the profession of residential contracting.

(ii) One (1) shall represent consumers, and the other shall be at least sixty (60) years of age.

(iii) Both shall be appointed by the Governor from the state at large, subject to confirmation by the Senate.

(iv) These two (2) positions may not be held by the same person.

(v) Members appointed to these two (2) positions shall be full voting members but shall not participate in the grading of examinations.

(C) The members shall serve three-year terms. No member may serve more than three (3) three-year terms.

(3)(A) The committee shall elect a chair, vice chair, and secretary, each to serve in his or her respective capacity for one (1) year.

(B) Officers shall be elected by the committee annually.

(4) Three (3) voting members shall constitute a quorum.

(b) Committee members shall receive the same expense reimbursement and stipend as provided to the Contractors Licensing Board under the procedures prescribed by § 25-16-901 et seq. Expenses and stipends shall be paid by the board.

(c) The Governor shall make appointments to fill vacancies in the same manner as appointments were made under subsection (a) of this section. Persons appointed to fill vacancies shall serve the unexpired term of office and shall possess the same qualifications as if they were being appointed to a full term on the committee.

(d) The board shall provide staff and administrative support for the committee.

History. Acts 1999, No. 950, § 1; 2003, No. 203, § 1; 2005, No. 1962, § 73; 2007, No. 84, § 1.

Amendments. The 2005 amendment, in (a)(2)(A), inserted the (i)-(iii) designations; and rewrote present (iii).

The 2007 amendment, in (a)(2)(C), deleted "except that the initial appointees

shall serve staggered terms determined by the Governor so that three (3) serve a one-year term, two (2) serve a two-year term, and two (2) serve a three-year term" from the end of the first sentence and substituted "three (3)" for "two (2)" in the last sentence.

17-25-504. Authority.

The Residential Building Contractors Committee may:

(1) Issue, modify, suspend, and revoke residential building contractor's licenses;

(2) Establish qualifications for residential building contractor's licenses;

(3) Enforce this subchapter and the committee's regulations;

(4) Issue regulations necessary for the implementation of this subchapter;

(5) Levy civil penalties in the same amounts and under the same procedures as prescribed for the Contractors Licensing Board;

(6) Issue orders of abatement in the same manner and to the same extent as authorized for the board; and

(7) Seek any other civil remedies which are available to the board.

History. Acts 1999, No. 950, § 1.

CASE NOTES

Jurisdiction.

Residential Building Contractors Committee of the Arkansas Contractors Licensing Board had jurisdiction to conduct hearings on license violations pursuant to § 17-25-510 and to impose a \$104,000

penalty on a violating contractor pursuant to this section and §§ 17-25-505 and 17-25-510. Ark. Residential Bldg. Contrs. Comm. of the Ark. Contrs. Licensing Bd. v. JAG Enters., 2009 Ark. App. 868, — S.W.3d — (2009).

17-25-505. License from committee required.

No person shall act as a residential building contractor after July 1, 2001, unless licensed by the Residential Building Contractors Committee or exempted from licensure under this subchapter.

History. Acts 1999, No. 950, § 1.

CASE NOTES

Penalty.

Residential Building Contractors Committee of the Arkansas Contractors Licensing Board had jurisdiction to conduct hearings on license violations pursuant to § 17-25-510 and to impose a \$104,000

penalty on a violating contractor pursuant to this section and §§ 17-25-504 and 17-25-510. Ark. Residential Bldg. Contrs. Comm. of the Ark. Contrs. Licensing Bd. v. JAG Enters., 2009 Ark. App. 868, — S.W.3d — (2009).

17-25-506. Application for license.

(a) Applications for licensure shall be made on forms prescribed by the Residential Building Contractors Committee and shall have attached thereto:

- (1) A compiled financial statement with each new application; and
- (2) Such other information as required by the committee.

(b)(1) The financial statement required with each application is not public information and may not be made available for inspection by any person, unless by an order of a court of competent jurisdiction.

(2) After the contractor is licensed, the Contractors Licensing Board shall destroy the financial statement by the process of shredding or returning the financial statement to the contractor.

History. Acts 1999, No. 950, § 1; 2003, No. 203, § 2.

17-25-507. Applicant qualifications.

In determining the qualifications of any applicant for original license or any renewal license, the Residential Building Contractors Committee shall consider, among other things, the following:

- (1) Experience;
- (2) Ability;
- (3) The manner of performance of previous contracts;

- (4) Financial condition;
- (5) Any other fact tending to show ability and willingness to conserve the public health and safety; and
- (6) Default in complying with the provisions of this subchapter or any other law of the state.

History. Acts 1999, No. 950, § 1.

17-25-508. Name of licensed contractor.

Residential building contractors may act as such only in the name under which they are licensed by the Residential Building Contractors Committee.

History. Acts 1999, No. 950, § 1.

17-25-509. Written examination.

(a) Except as otherwise provided in this section, no person shall be licensed as a residential building contractor unless the person has passed a written examination prescribed by the Residential Building Contractors Committee.

(b) Persons licensed by the Contractors Licensing Board shall not be required to submit to written examination by the committee but must meet all other requirements for licensure as a residential building contractor.

(c) A property owner who acts as a residential building contractor for the purpose of constructing his or her own residence is not required to be licensed under this subchapter unless the person constructs more than one (1) residence per calendar year.

History. Acts 1999, No. 950, § 1; 2003, No. 1103, § 1.

A.C.R.C. Notes. Acts, 1999, No. 950, § 1, provided in part: "(c) The committee shall waive the written examination for any person who: (1) Submits proof of having obtained five (5) building permits within the three (3) years preceding the

date of application; (2) One (1) building permit within the preceding twelve (12) months; or (3) Proof of experience in residential construction acceptable to the committee if the construction was in a nonpermitting area.

"(d) Subsection (c) of this section expires on July 1, 2001."

17-25-510. Hearings regarding violations.

The Residential Building Contractors Committee may conduct hearings regarding alleged violations of this subchapter or regulations promulgated thereunder, and the hearings shall be conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq. The committee shall within a reasonable time make findings and determinations as a result of the hearings.

History. Acts 1999, No. 950, § 1.

CASE NOTES

Jurisdiction.

Residential Building Contractors Committee of the Arkansas Contractors Licensing Board had jurisdiction to conduct hearings on license violations pursuant to this section and to impose a \$104,000

penalty on a violating contractor pursuant to §§ 17-25-504, 17-25-505, and this section. Ark. Residential Bldg. Contrs. Comm. of the Ark. Contrs. Licensing Bd. v. JAG Enters., 2009 Ark. App. 868, — S.W.3d — (2009).

17-25-511. Appeal from committee decision.

Any person aggrieved by an action or decision of the Residential Building Contractors Committee may appeal to the Contractors Licensing Board within ten (10) calendar days after the action or decision under procedures prescribed by the board. Aggrieved parties shall be granted an opportunity to address the board regarding the committee's actions, and the final actions of the board shall be binding upon the committee.

History. Acts 1999, No. 950, § 1.

17-25-512. Expiration of license — Fees.

All licenses issued by the Contractors Licensing Board shall expire one (1) year after the date of issuance unless otherwise provided by the Residential Building Contractors Committee. The committee may charge reasonable examination fees and delinquency fees and may charge a fee not to exceed one hundred dollars (\$100) for new licenses or renewal of a license. All fees and other moneys collected by the committee shall be disposed of as provided by § 17-25-205 and shall be used by the board to implement this subchapter.

History. Acts 1999, No. 950, § 1.

17-25-513. Exemption for personal homebuilder.

Nothing in this subchapter shall be construed as requiring a person who acts as a residential building contractor in the construction of his or her own residence to obtain a license from the Residential Building Contractors Committee unless the person builds more than one (1) residence during any year.

History. Acts 1999, No. 950, § 1.

17-25-514. Workers' compensation required.

(a) A residential building contractor required to be licensed by the Residential Building Contractors Committee shall secure the payment of workers' compensation under § 11-9-401 et seq.

(b) The committee shall require proof of current workers' compensation coverage before issuing or renewing a license.

(c)(1) If a contractor fails to maintain workers' compensation coverage, the committee shall revoke the contractor's license.

(2) A contractor's license that has been revoked due to failure to maintain workers' compensation coverage may be reinstated upon receipt of proof that the contractor has secured workers' compensation coverage.

(d) The committee shall promulgate rules necessary to enforce this section.

History. Acts 2005, No. 1711, § 1; deleted the former (b)(1) designation and 2007, No. 398, § 1.

Amendments. The 2007 amendment

CHAPTER 26
COSMETOLOGY AND RELATED OCCUPATIONS

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. COSMETOLOGY TECHNICAL ADVISORY COMMITTEE.
- 3. LICENSING.
- 4. COSMETOLOGICAL SCHOOLS AND ESTABLISHMENTS.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-23-101 et seq.

RESEARCH REFERENCES

ALR. Sufficiency of evidence to support product misuse defense in products liability action concerning cosmetics and other personal care products. 58 A.L.R.4th 40.
Products liability — mascara and other eye cosmetics. 63 A.L.R.4th 105.
Products liability — hair straighteners and relaxants. 84 A.L.R.4th 1090.
Am. Jur. 11 Am. Jur. 2d, Barbers, § 4 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-26-101. Title.
- 17-26-102. Definitions.
- 17-26-103. Scope of chapter.

SECTION.

- 17-26-104. Unlawful practices.
- 17-26-105. Grounds for disciplinary action.

Effective Dates. Acts 1955, No. 358, Art. 16, § 1: Mar. 24, 1955. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that confusion and hardship exists among the board members and the cosmetologists of Arkansas because of the uncertainty as to the powers and duties of the board and that this act will materially alleviate the confusion and remove the hardships that exist. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall take

effect and be in force from the date of its approval.”

17-26-101. Title.

This chapter shall be known and cited as the “Cosmetology Act”.

History. Acts 1955, No. 358, Art. 1, § 1;
A.S.A. 1947, § 71-814.

17-26-102. Definitions.

(a) As used in this chapter:

(1) “Aesthetician” means any person who engages in the practice of beautifying the body by cleaning, waxing, externally manipulating, or stimulating the body by means of the hands, devices, apparatus, or appliances with or without the use of cosmetic preparations, antiseptics, tonics, lotions, and creams;

(2) “Cosmetological establishment” means any premises, building, or part of a building in which is practiced any branch or any combination of branches of cosmetology or the occupation of a cosmetologist except:

(A) The branch of manicuring as practiced in barbershops licensed by the Cosmetology Technical Advisory Committee and complying with the provisions of this chapter; and

(B) Nursing facilities as defined under § 20-10-1401;

(3) “Cosmetologist” means any person who:

(A) Engages in the practice of cosmetology in a licensed cosmetological establishment, except the branch of electrolysis; or

(B) Services a client in premises not licensed as a cosmetological establishment when the services rendered involve a special event in which the cosmetology service is to be performed for an on-site participant of the event;

(4) “Electrologist” means any person who permanently removes hair from or destroys hair on the human body for beautification by the use of an electric needle or by the use of any other kinds of devices or appliances designed to permanently remove hair from the human body;

(5) “Manager-operator” means a licensed cosmetologist authorized to engage in the practice of cosmetology, independent of personal supervision in a duly licensed establishment;

(6) “Manicurist” means any person who engages in the occupation of manicuring the nails of any person by cutting, trimming, polishing, coloring, tinting, cleansing, filing, buffing, pushing, extending, protecting, wrapping, covering, building, or beautifying the nails or performing any other similar work upon the nails of any person by any means, including the softening of the arms, hands, feet, or ankles of any person by use of hands, mechanical or electrical apparatus or appliances, cosmetic or chemical preparations, antiseptics, lotions, or creams or by massaging, cleansing, manipulating or stimulating the arms, hands, feet, or ankles of any person; and

(7) “Student” means any person enrolled and engaged in learning or acquiring a knowledge of the occupation of cosmetology or any branch of cosmetology in a licensed school of cosmetology under a licensed instructor.

(b) The art of cosmetology includes any and all and any combination of the following practices:

(1) Arranging, dressing, curling, waving, machineless permanent waving, permanent waving, cleansing, cutting, singeing, bleaching, tinting, coloring, straightening, dyeing, brushing, beautifying, or otherwise treating by any means the hair of any person or wigs or hairpieces;

(2) Externally manipulating, cleaning, waxing, or stimulating the body by means of the hands, devices, apparatus, or appliances with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams;

(3) Beautifying the body by use of cosmetic preparations, antiseptics, tonics, lotions, or creams;

(4) Temporarily removing superfluous hair from the body of any person by the use of depilatories or by the use of tweezers, chemicals, or preparations or by the use of devices or appliances of any kind or description, except by the use of light waves, commonly known as rays;

(5) Cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring the nails of any person; and

(6) Massaging, cleansing, or beautifying the nails of any person.

(c) The branch of electrolysis, a practice of cosmetology requiring a separate course of training as prescribed by § 17-26-306, includes permanently removing hair from or destroying hair on the human body by the use of an electric needle or by the use of any other kind of device or appliance designed to permanently remove hair from the human body.

(d) Every person, firm, or corporation exacting a fee for the teaching of any branch of cosmetology is classed as a school of cosmetology under this chapter and is required to comply with all of its provisions.

History. Acts 1955, No. 358, Art. 2, § 2; 1955, No. 358, Art. 3, § 1; 1955, No. 358, Art. 4, § 1; 1955, No. 358, Art. 5, § 1; 1955, No. 358, Art. 7, § 1; 1955, No. 358, Art. 8, § 12; 1955, No. 358, Art. 12, § 1; 1965, No. 403, § 9; 1969, No. 400, §§ 1, 2; 1985, No. 215, § 4; A.S.A. 1947, §§ 71-827, 71-831, 71-833, 71-837, 71-848, 71-863, 71-875; Acts 1995, No. 771, § 1; 1997, No. 512, § 1; 2003, No. 680, § 2; 2007, No. 223, § 1.

Amendments. The 2007 amendment substituted “the body” for “the face, neck, arms, bust, or upper part of the human body” throughout the section; in (a)(1), deleted “massaging” preceding “cleaning” and inserted “waxing, externally manipu-

lating”; redesignated former (a)(3) as (a)(2) and former (a)(2) as (a)(3); deleted “cosmetician or” preceding “cosmetologist” in (a)(2); substituted “Cosmetologist” for “Cosmetician” or “cosmetologist” in (a)(3); added (a)(3)(B); deleted former (a)(5) and redesignated the remaining subdivisions; in (a)(7), deleted “aesthetician” following “student,” substituted “enrolled and” for “who is,” and “cosmetology or any branch of cosmetology” for “aesthetics”; deleted former (a)(9) and (10) and made related changes; in (b)(2), substituted “Externally manipulating” for “Massaging” and inserted “waxing”; substituted “Temporarily removing” for “Removing, temporarily” in (b)(4); and rewrote (c).

17-26-103. Scope of chapter.

(a) The following persons are exempt from this chapter:

(1) All persons authorized by the laws of this state to practice medicine, surgery, dentistry, pharmacy, osteopathy, chiropractic, naturopathy, or podiatry;

(2) Barbers insofar as their usual and ordinary vocation and profession is concerned;

(3) Employees employed to render cosmetological services in the course of and incidental to the business of employers engaged in the theatrical, radio, television, or motion picture production industry;

(4) Individuals and employees rendering cosmetological services in the course of, in connection with, and incidental to the preparation of bodies for burial, or the business of embalmers and undertakers;

(5) Direct care staff as defined in § 20-10-1401 who provide routine personal hygiene and related daily care services to residents of nursing facilities as defined in § 20-10-1401 and for which the fee is included in the monthly facility charges; and

(6) Relatives of residents of nursing facilities as defined in § 20-10-1401 who provide cosmetological services to a related resident of a nursing facility.

(b) This chapter does not prohibit any practice within its scope in cases of emergency, nor the administration of any practice outside of a licensed school of cosmetology or cosmetological establishment when necessary because of the illness or other physical incapacitation of the recipient of the service and when performed by a licensee obtained for the purpose from a licensed cosmetological establishment.

(c) This chapter does not prohibit the recommendation, demonstration, administration, or sale of cosmetics by any person not claiming to be a cosmetologist.

History. Acts 1955, No. 358, Art. 2, §§ 3, 4; A.S.A. 1947, §§ 71-828, 71-829; Acts 2003, No. 680, § 3; 2007, No. 223, § 2.

Amendments. The 2007 amendment substituted “cosmetologist” for “cosmetician” in (c).

17-26-104. Unlawful practices.

(a)(1) It is unlawful for any person, firm, or corporation to violate this chapter or a rule adopted by the Cosmetology Technical Advisory Committee pursuant to this chapter.

(2) Evidence of a violation may result in a criminal or civil penalty.

(3) Each day of a violation is a separate offense.

(b)(1) Being found guilty of a criminal penalty is a Class D misdemeanor and is punishable by a fine in any sum not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500) or by imprisonment in the county jail for a period of not more than ninety (90) days, or by both fine and imprisonment.

(2) After being found guilty of a Class D misdemeanor under this section, a subsequent charge under this section is a Class C misdemeanor.

(3) All prosecuting attorneys of the state and all political subdivisions of the state shall enforce this chapter and prosecute any person or entity violating it.

(c)(1) Being found in violation of a civil penalty under this section may result in suspension of license, revocation of license, fine, or any combination.

(2) For good cause shown and pursuant to rules of the committee, the committee may revoke, suspend, or refuse to renew at any time any license issued under this chapter on any of the grounds for disciplinary actions under § 17-26-105.

(3)(A) The committee shall suspend the license of any person licensed under this chapter who has been adjudged by a court of competent jurisdiction to be insane or legally incompetent.

(B) The record of the adjudication shall be prima facie evidence that the person is insane or legally incompetent within the meaning of subdivision (c)(3)(A) of this section.

(C) The committee shall not reinstate a license that has been suspended under subdivision (c)(3)(A) of this section, except upon proof that the licensee has been restored to a mental condition that would allow the licensee to comply with the requirements of this chapter.

(4)(A) Whenever the committee finds that a licensee or a holder of a permit issued by the committee is guilty of a violation of the rules of the committee or the laws of this state pertaining to any occupation, profession, or business licensed or regulated by the committee, the committee may impose a penalty on the licensee or permit holder in lieu of suspension or revocation of the license or permit.

(B) Upon imposition of a penalty in lieu of suspension or revocation of a license or permit, the committee may require that the licensee or permit holder pay a penalty to the committee for the violation with the condition that the license or permit may be suspended until the penalty is paid.

(C)(i) Prior to the imposition of a penalty, the committee shall hold an investigation and hearing after notice to the licensee or his or her attorney.

(ii) The penalty may be imposed in lieu of revocation or suspension of a license or permit only if the committee finds that the public health, safety, welfare, and morals would not be impaired and that the penalty achieves the desired disciplinary result.

(5)(A) The committee shall establish by rule the penalty system to be imposed under this section.

(B) The minimum penalty shall be twenty-five dollars (\$25.00), and a maximum penalty of one thousand dollars (\$1,000) is authorized if the penalty is imposed by the committee in lieu of revocation or suspension of a license or permit.

(C) The committee shall establish by rule an option that mandates a person to attend a health and safety training course in lieu of or in addition to paying a penalty.

(6) The power of the committee to impose penalties shall not be affected by any other civil or criminal proceeding concerning the violation.

(d) The committee may refuse to issue a license to any person upon reasonable evidence that the person would jeopardize the health and safety of the public.

(e) Any person penalized by the committee under this chapter may appeal any order of the committee in the manner provided by law.

(f) The committee may impose a civil penalty as provided in this section against any unlicensed person, firm, or corporation practicing or offering to practice any act that requires licensure under this chapter.

History. Acts 1955, No. 358, Art. 13; substituted “Unlawful practices” for “Unlawful practices — Penalties” in the section heading, and rewrote the section. A.S.A. 1947, § 71-881; Acts 1993, No. 1056, § 7; 2007, No. 223, § 3.

Amendments. The 2007 amendment

17-26-105. Grounds for disciplinary action.

The grounds for disciplinary action are as follows:

(1) Failure of a person, firm, or corporation operating a cosmetological establishment or school of cosmetology or engaged in the practice of cosmetology or any of its branches to comply with the requirements of this chapter and the regulations of the Cosmetology Technical Advisory Committee;

(2) Failure to comply with the rules governing health and safety adopted by the committee and approved by the State Board of Health for the regulation of cosmetological establishments, schools of cosmetology, or the practice of the occupation of cosmetician or cosmetologist;

(3) Obtaining practice in cosmetology or any branch thereof or money or any other thing of value by fraudulent misrepresentation;

(4) Gross malpractice;

(5) Continued practice by a person knowingly having an infectious or contagious disease;

(6) Habitual drunkenness or habitual addiction to the use of morphine or any habit-forming drug;

(7) Advertisement by means of knowingly false or deceptive statements;

(8) Permitting a certificate of registration or license to be used when the holder is not personally, actively, and continuously engaged in business;

(9) Failure to display the license;

(10) Conviction under the laws of the United States or any state or territory of the United States of a crime that:

(A) Is a felony or misdemeanor, as evidenced by a certified copy of a court record or by license application; and

(B) Involves dishonesty or is in any way related to the practice or teaching of the cosmetology industry, unless the applicant or licensee can demonstrate to the board's satisfaction that the applicant or licensee has been sufficiently rehabilitated to warrant the public trust;

(11) Engaging, outside of a licensed school of cosmetology or cosmetological establishment and for compensation in any form whatever, in any practice for which a license is required under this chapter, except that when such a service is necessary because of the illness or other physical incapacity of the person with respect to whom it is performed, it may be performed by a licensee obtained for the purpose from a licensed cosmetological establishment;

(12) Failure to wear clean outer garments, as prescribed by the committee, to allow the safe and hygienic practice of cosmetology or any branch thereof;

(13) Any other unfair or unjust practice, method, or dealing that the committee finds may justify such an action or failure to follow guidelines concerning the use of chemicals or equipment as established by rule of the committee; or

(14) Fraud or deception in procuring a license.

History. Acts 1955, No. 358, Art. 11, § 3; A.S.A. 1947, § 71-873; Acts 2003, No. 595, § 1; 2007, No. 223, § 4.

Amendments. The 2007 amendment substituted "health and safety" for "sanitary conditions" in (2); rewrote (10); added "or failure to follow guidelines concerning the use of chemicals or equipment as established by rule of the board" in (13); added (14); and made related changes.

SUBCHAPTER 2 — COSMETOLOGY TECHNICAL ADVISORY COMMITTEE

SECTION.

- 17-26-201. Creation — Members.
- 17-26-202. [Repealed.]
- 17-26-203. [Repealed.]
- 17-26-204. Inspectors and professional employees.
- 17-26-205. Powers and duties.

SECTION.

- 17-26-206. Meetings — Examinations.
- 17-26-207. Registration record.
- 17-26-208. Investigations, hearings, or inspections.
- 17-26-209. Fees — Method of payment.
- 17-26-210. Disposition of funds.

A.C.R.C. Notes. Acts 2009, No. 4, § 1, provided: "Legislative intent.

"(a) The General Assembly declares that this act is necessary to:

"(1) Improve the health of the citizens of Arkansas in an effective and efficient manner; and

"(2) Provide for effective administration of the delivery of cosmetology-related programs.

"(b) It is the intent of the General Assembly to provide for an orderly transfer of powers, authorities, duties, and functions of the State Board of Cosmetology to

the State Board of Health and the Department of Health with a minimum disruption of government services and functions and with a minimum expense."

Acts 2009, No. 4, § 2, provided: "(a)(1) Effective July 1, 2009, the State Board of Cosmetology is abolished and transferred to the State Board of Health and the Department of Health by a type 3 transfer pursuant to § 25-2-106.

"(2) As used in this act, the Department of Health shall be considered a principal department established by Acts 1971, No. 38, § 11.

“(b)(1) All authority, powers, duties, and functions as established by law for the State Board of Cosmetology, including all purchasing, budgeting, fiscal, accounting, human resources, payroll, legal, information systems, maintenance, program support, administrative support, and other management functions are transferred to the State Board of Health and the Department of Health, except as specified in this act.

“(2) All records, personnel, property, unexpended balances of appropriations, allocations, or other funds are transferred to the Department of Health. All funds shall be deposited into the Public Health Fund.

“(3) All powers, duties, and functions, including without limitation rulemaking, regulation, and licensing, promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications as established by law for the State Board of Cosmetology are transferred to the State Board of Health, except as specified in this act.

“(c) The Arkansas Code Revision Commission shall replace ‘State Board of Cosmetology’ in the Arkansas Code with ‘State Board of Health’, except as specified in this act.”

Effective Dates. Acts 1955, No. 358, Art. 16, § 1: Mar. 24, 1955. Emergency clause provided: “It has been found and is declared by the General Assembly of Arkansas that confusion and hardship exists among the board members and the cosmetologists of Arkansas because of the uncertainty as to the powers and duties of the board and that this act will materially alleviate the confusion and remove the hardships that exist. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in force from the date of its approval.”

Acts 1961, No. 490, § 13: Mar. 16, 1961. Emergency clause provided: “It has been found and is declared by the General Assembly of Arkansas that certain discrepancies exist in the laws covering the practice of cosmetology and uncertainty exists as to the powers and duties of the board, and this act will alleviate the said discrepancies and uncertainty that exist. Therefore, an emergency is declared to exist and this act being necessary for the

preservation of the public peace, health and safety shall take effect and be in force from the date of its approval.”

Acts 1968 (1st Ex. Sess.), No. 57, § 2: Feb. 27, 1968. Emergency clause provided: “It has been found and is declared by the General Assembly of the State of Arkansas that the State Board of Cosmetology is required to register and re-register cosmetological students, that no provision in the law exists under which the agency receives fees for the activity now required of them and that the work load is such that the board cannot economically continue to efficiently operate, and that this act will alleviate this situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in force from the date of its approval.”

Acts 1970 (1st Ex. Sess.), No. 83, § 3: became law without Governor's signature, Mar. 28, 1970. Emergency clause provided: “It has been found and determined by the General Assembly that the Board of Cosmetology received the greater amount of revenue during the last six months of the fiscal year and that with the present law the board must start each fiscal year without a fund balance, which causes undue restrictions on the operations and effectiveness of the board. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1981, No. 611, § 3: Mar. 23, 1981. Emergency clause provided: “It has been found and determined by the General Assembly that the Board of Cosmetology is not able, under its present schedule of fees, to support its operational costs without additional sources of revenue. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1981 (1st Ex. Sess.), No. 8, § 2: Nov. 24, 1981. Emergency clause provided: “It is hereby found and determined by the Seventy-Third General Assembly, meeting in Extraordinary Session, that the passage of this act is necessary for the Board of Cosmetology's operation since

the board has no initial operating funds, under present authority, in which to begin each fiscal year. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after the date of its passage and approval."

Acts 1983, No. 131, § 6 and No. 135, § 6: Feb. 10, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as to questions coming before such bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 296, § 8: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the Seventy-Sixth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1987 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1987 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1987."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards

and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 69, § 13: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2003 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2003 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2003."

Acts 2007, No. 244, § 2: Mar. 9, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that because of issues and widespread problems that have arisen with the current composition and requirements of the State Board of Cosmetology, this act changes the composition and requirements of the board; that the public has spoken clearly on these needed changes; and that this act is necessary because deficiencies in the cosmetology industry require immediate redress. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become

effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during

which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

17-26-201. Creation — Members.

(a) There is created the Cosmetology Technical Advisory Committee.

(b)(1) The committee shall consist of seven (7) members appointed by the State Board of Health to two-year terms.

(2) A member may be removed from the committee by the board for cause.

(3) A member shall not serve more than ten (10) years on the committee.

(c) The committee shall be composed of the following representatives from within the cosmetology industry who are of good moral character and who are at least twenty-five (25) years of age:

(1) One (1) member shall be a licensed cosmetologist actively engaged in practicing the art of cosmetology for at least five (5) years at the time of appointment;

(2) One (1) member shall be a licensed nail technician;

(3) One (1) member shall be an owner of a licensed school of cosmetology or shall be a director of cosmetology at a state-supported school;

(4) One (1) member shall be a licensed aesthetician; and

(5) Three (3) members shall represent the cosmetology industry at large or a related field.

(d)(1) A member of the committee shall not be directly or indirectly connected with the wholesale business of the manufacture, rental, sale, or distribution of cosmetological appliances or supplies.

(2) A member of the committee shall not have a contract or a pending bid for a contract with the Department of Health concerning cosmetology.

(e) Only two (2) members of the committee may be appointed from any one (1) congressional district.

(f) Vacancies occurring during a term shall be filled for the unexpired term.

(g) Before entering upon the discharge of his or her duties, each member shall make and file with the Secretary of State the oath of office prescribed by Arkansas Constitution, Article 19, § 20.

(h) Each member of the committee may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(i) The board shall promulgate by rule the duties and powers of the committee.

History. Acts 1955, No. 358, Art. 1, §§ 2, 3, 11; 1973, No. 566, § 2; 1975, No. 532, §§ 1, 2; 1977, No. 420, § 1; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; 1985, No. 215, § 1; A.S.A. 1947, §§ 6-623 — 6-626, 71-815, 71-816, 71-824; Acts

1997, No. 250, § 133; 2001, No. 1553, § 24; 2003, No. 69, § 6; 2007, No. 223, § 5; 2007, No. 244, § 1; 2009, No. 4, § 3; 2009, No. 381, § 1.

A.C.R.C. Notes. Acts 2007, No. 244, § 3, provided: "On the effective date of this act, a current member of the State Board of Cosmetology who meets the requirements of this act shall continue to serve the remainder of his or her term. If a current member does not meet the requirements of this act, the member shall be replaced by appointment of the Governor within sixty (60) days."

Acts 2009, No. 4, § 1, provided: "Legislative intent.

"(a) The General Assembly declares that this act is necessary to:

"(1) Improve the health of the citizens of Arkansas in an effective and efficient manner; and

"(2) Provide for effective administration of the delivery of cosmetology-related programs.

"(b) It is the intent of the General Assembly to provide for an orderly transfer of powers, authorities, duties, and functions of the State Board of Cosmetology to the State Board of Health and the Department of Health with a minimum disruption of government services and functions and with a minimum expense."

Acts 2009, No. 4, § 2, provided: "(a)(1) Effective July 1, 2009, the State Board of Cosmetology is abolished and transferred to the State Board of Health and the Department of Health by a type 3 transfer pursuant to § 25-2-106.

"(2) As used in this act, the Department of Health shall be considered a principal department established by Acts 1971, No. 38, § 11.

"(b)(1) All authority, powers, duties, and functions as established by law for the State Board of Cosmetology, including all purchasing, budgeting, fiscal, accounting,

human resources, payroll, legal, information systems, maintenance, program support, administrative support, and other management functions are transferred to the State Board of Health and the Department of Health, except as specified in this act.

"(2) All records, personnel, property, unexpended balances of appropriations, allocations, or other funds are transferred to the Department of Health. All funds shall be deposited into the Public Health Fund.

"(3) All powers, duties, and functions, including without limitation rulemaking, regulation, and licensing, promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications as established by law for the State Board of Cosmetology are transferred to the State Board of Health, except as specified in this act.

"(c) The Arkansas Code Revision Commission shall replace 'State Board of Cosmetology' in the Arkansas Code with 'State Board of Health', except as specified in this act."

Publisher's Notes. As originally constituted, the State Board of Cosmetology had only six members, whose terms were arranged so that two terms expired every fifth year and one term expired in each of the four intervening years.

Amendments. The 2007 amendment by No. 223 deleted "cosmeticians or" preceding "cosmetologists" in (b)(2)(A)(i).

The 2007 amendment by No. 244 rewrote (b), inserted present (c) through (f), and redesignated the remaining subdivisions accordingly.

The 2009 amendment by No. 4 rewrote the section.

The 2009 amendment by No. 381 substituted "seven (7)" for "five (5)" in (b)(1); inserted (c)(5), deleted (d), and redesignated the remaining subsections accordingly; and made related changes.

17-26-202. [Repealed.]

Publisher's Notes. This section, concerning officers of the State Board of Cosmetology, was repealed by Acts 2009, No.

4, § 3. The section was derived from Acts 1955, No. 358, Art. 1, § 4; A.S.A. 1947, § 71-817.

17-26-203. [Repealed.]

Publisher’s Notes. This section, concerning the Director of the State Board of Cosmetology, was repealed by Acts 2009, No. 4, § 3. The section was derived from Acts 1955, No. 358, Art. 1, § 5; A.S.A. 1947, § 71-818.

17-26-204. Inspectors and professional employees.

The Department of Health may employ inspectors and professional employees and fix their compensation, which compensation and all reasonable expenses incurred shall be paid from the Public Health Fund from fees generated by the program.

History. Acts 1955, No. 358, Art. 1, § 10; 1973, No. 566, § 1; A.S.A. 1947, § 71-823; Acts 2007, No. 223, § 6; 2009, No. 4, § 3.

A.C.R.C. Notes. The operation of subsection (b) of this section was suspended by adoption of a self-insured fidelity bond program for public officers, officials and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. Subsection (b) of

this section may again become effective upon cessation of coverage under that program. See § 21-2-703.

Amendments. The 2007 amendment deleted “investigators” preceding “and professional” in the section heading and in (a); and deleted former (d) relating to mandatory retirement.

The 2009 amendment rewrote the section.

17-26-205. Powers and duties.

(a) In addition to the other duties set forth in this chapter, the Department of Health shall:

- (1) Prescribe the duties of the department’s employees;
- (2) Hold examinations as to the qualifications of all applicants for registration whose applications have been submitted to it in proper form, unless otherwise provided;
- (3) Issue permits and licenses to the applicants who are entitled thereto;
- (4) Register cosmetological establishments and schools of cosmetology;
- (5) Implement the State Board of Health’s rules:
 - (A) For carrying out the provisions of this chapter;
 - (B) For conducting examinations of applicants for licensing;
 - (C) For governing the recognition and the credits to be given to the study of cosmetology or any of its branches, under a cosmetologist or in a school of cosmetology, licensed under the laws of another state; and
 - (D) For governing health and safety, as it considers necessary, in regard to the precautions to be employed to prevent the creating or spreading of infections or contagious diseases in cosmetological establishments, in schools of cosmetology, and in the practice of a cosmetologist and in any branch of cosmetology, provided the rules meet the minimum requirements of the law. A copy of all rules governing health and safety shall be made available to each licensee. The rules adopted under this subsection shall have the force and effect of law.

(b) In addition to the powers conveyed upon the department by this chapter, the department may enforce the provisions of this chapter or any reasonable rule adopted by the board through injunctive process.

(c) The department may incur reasonable expenses and perform such other acts as may be necessary to carry out its duties and functions and to administer this chapter.

History. Acts 1955, No. 358, Art. 1, §§ 7, 12; 1961, No. 490, §§ 1, 2, 11; A.S.A. 1947, §§ 71-820, 71-825, 71-882; Acts 2007, No. 223, § 7; 2009, No. 4, § 3.

Amendments. The 2007 amendment added “with all day-to-day and employment decisions to be made by the Director of Cosmetology” to the end of (a)(1); substituted “permits” for “certificates of registration” in (a)(5); deleted “registration and” preceding “licensing” in (a)(9)(B); de-

leted “cosmetician or” preceding “cosmetologist” in (a)(9)(C) and (a)(9)(D); substituted “health and safety” for “sanitary conditions” twice in (a)(9)(D); and made minor punctuation changes.

The 2009 amendment rewrote (a); substituted “department” for “board” throughout (b) and (c), deleted “or regulation” following “rule” in (b); and made minor stylistic changes.

17-26-206. Meetings — Examinations.

(a) The Department of Health or a private testing entity shall administer licensing examinations for eligible applicants.

(b) A member of the Cosmetology Technical Advisory Committee shall not be permitted to participate in or have the powers and duties that are related to the preparation of examinations or be permitted to give or grade the examinations of applicants for licensing.

History. Acts 1955, No. 358, Art. 1, § 6; 1977, No. 420, § 2; 1985, No. 241, § 1; A.S.A. 1947, § 71-819; Acts 2007, No. 223, § 8; 2009, No. 4, § 3.

Amendments. The 2007 amendment rewrote the section.

The 2009 amendment, in (a), substituted “Department of Health” for “State

Board of Cosmetology inspectors” and deleted “on a monthly basis” following “applicants”; in (b), substituted “Cosmetology Technical Advisory Committee” for “board”; and made minor stylistic changes.

17-26-207. Registration record.

The Department of Health shall keep a registration record containing the names, known places of business, and the date and number of the license of every licensed cosmetologist and of those engaged in the practice of any branch of cosmetology, together with the names and addresses of all cosmetological establishments and schools of cosmetology registered under this chapter. This record shall also contain such facts as the applicants may have stated in their applications for examination for permitting and licensing.

History. Acts 1955, No. 358, Art. 1, § 9; 1968 (1st Ex. Sess.), No. 57, § 1; A.S.A. 1947, § 71-822; Acts 2007, No. 223, § 9; 2009, No. 4, § 3.

Amendments. The 2007 amendment deleted “cosmetician or” preceding “cos-

metologist” in the first sentence, and substituted “permitting” for “registration” in the second sentence.

The 2009 amendment substituted “Department of Health” for “State Board of Cosmetology.”

17-26-208. Investigations, hearings, or inspections.

(a) The Department of Health shall conduct investigations and inspections as promulgated by rule.

(b)(1) Hearings conducted by the Cosmetology Technical Advisory Committee may be held bimonthly for review of cases for which disciplinary action may be required.

(2)(A) Except as provided in subdivision (b)(2)(B) of this section, a hearing attended by two (2) or more members of the committee is a meeting.

(B) A final order shall not be imposed by fewer than three (3) members.

(C) A final order imposed by the committee may be appealed to the State Board of Health within thirty (30) days of its receipt.

History. Acts 1955, No. 358, Art. 1, § 8; A.S.A. 1947, § 71-821; Acts 2007, No. 223, § 10; 2009, No. 4, § 3.

Amendments. The 2007 amendment substituted “inspections” for “proceedings” in the section heading, and rewrote the section.

The 2009 amendment substituted “Department of Health” for “State Board of

Cosmetology” in (a); and in (b), inserted “conducted by the Cosmetology Technical Advisory Committee” in (b)(1), substituted “committee” for “board” in (b)(2)(A), substituted “three (3)” for “five (5)” in (b)(2)(B), and added (b)(2)(C).

17-26-209. Fees — Method of payment.

(a) The State Board of Health shall promulgate a fee schedule by rule and collect fees accordingly.

(b) In addition to any other method of payment acceptable to the Department of Health, the department shall accept personal or business checks drawn on deposit accounts in financial institutions as payment for fees collected by the department.

History. Acts 1955, No. 358, Art. 12, § 6; 1961, No. 490, § 10; 1965, No. 403, § 11; 1969, No. 400, § 7; 1975, No. 532, § 4; 1975, No. 644, § 1; 1985, No. 188, § 1; 1985, No. 215, § 16; A.S.A. 1947, §§ 71-880, 71-880.1; Acts 1987, No. 296, § 4; 2007, No. 223, § 11; 2009, No. 4, § 3.

Amendments. The 2007 amendment rewrote (a).

The 2009 amendment substituted “State Board of Health” for “State Board of Cosmetology” in (a); and in (b), substituted “Department of Health” or “department” for “board” in three places.

17-26-210. Disposition of funds.

(a) All fees, fines, and penalties collected under this chapter and on behalf of the State Board of Health and all receipts of every kind and nature collected under this chapter shall be paid into the State Treasury and shall be credited to the Public Health Fund.

(b)(1) The fees, fines, penalties, and receipts shall be for the general uses of the Department of Health.

(2) Salaries and other expenses necessarily incurred in carrying into effect the provisions of this chapter and other programs administered

by the department shall be paid from the fees, fines, penalties, and receipts.

(c) Expenditures shall be substantiated by vouchers and itemized statements at the end of each fiscal year or at any other time when demand therefor is made by the Department of Finance and Administration.

History. Acts 1955, No. 358, Art. 12, § 5; 1961, No. 490, § 9; 1970 (1st Ex. Sess.), No. 83, § 1; 1981, No. 611, § 1; 1981 (1st Ex. Sess.), No. 8, § 1; A.S.A. 1947, §§ 71-879, 71-879.1; Acts 1991, No.

1228, § 1; 2003, No. 69, § 7; 2009, No. 4, § 3.

Amendments. The 2009 amendment rewrote the section.

SUBCHAPTER 3 — LICENSING

SECTION.

- 17-26-301. [Repealed.]
- 17-26-302. Application for examination and license.
- 17-26-303. Examinations generally.
- 17-26-304. Prerequisites to examination for a cosmetologist, manicurist, or aesthetician.
- 17-26-305. [Repealed.]
- 17-26-306. Electrologists — Prerequisites to examination.
- 17-26-307. Electrology instructors — Prerequisites to examination.
- 17-26-308. [Repealed.]
- 17-26-309. Examination for cosmetologists and all branches of cosmetology.
- 17-26-310. Failure to appear for examination.

SECTION.

- 17-26-311. Eligibility for reexamination.
- 17-26-312. Issuance of license.
- 17-26-313. [Repealed.]
- 17-26-314. Specificity of permit or license.
- 17-26-315. Reciprocity.
- 17-26-316. Display of license.
- 17-26-317. Notice of address change.
- 17-26-318. Duplicate license.
- 17-26-319. Expiration, renewal, and reinstatement.
- 17-26-320. [Repealed.]
- 17-26-321. Reissuance and reinstatement.
- 17-26-322. [Repealed.]
- 17-26-323. [Repealed.]

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Effective Dates. Acts 1955, No. 358, Art. 16, § 1: Mar. 24, 1955. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that confusion and hardship exists among the board members and the cosmetologists of Arkansas because of the uncertainty as to the powers and duties of the board and that this act will materially alleviate the confusion and remove the hardships that exist. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in force from the date of its approval."

Acts 1957, No. 48, § 3: Feb. 15, 1957. Emergency clause provided: "It is hereby found and determined by the General Assembly that confusion exists in the interpretation of the law relative to computing the number of hours and weeks needed to satisfactorily complete a cosmetology course as a condition for obtaining a license; that there are a number of persons in this state who have completed the necessary course of instruction but have been unable to obtain a license to practice as a cosmetologist or cosmetician in this state; and, that because of such confusion there is a need for the immediate passage of this act in order to offer relief to those persons now being discriminated against. Therefore, an emergency is hereby declared to exist and this act being necessary for the

preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1961, No. 490, § 13: Mar. 16, 1961. Emergency clause provided: “It has been found and is declared by the General Assembly of Arkansas that certain discrepancies exist in the laws covering the practice of cosmetology and uncertainty exists as to the powers and duties of the board, and this act will alleviate the said discrepancies and uncertainty that exist. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in force from the date of its approval.”

Acts 1963, No. 502, § 3: Mar. 20, 1963. Emergency clause provided: “It is hereby found and determined by the General As-

sembly that certain veterans of World War II and the Korean conflict who, subsequent thereto, were licensed cosmetologists in this state have permitted said licenses to expire; and it is the intention of the General Assembly that such veterans who were previously qualified and licensed as cosmetologists be permitted to renew said license without being required to meet any additional examination or schooling requirements; and that the immediate passage of this act is necessary to clarify the existing laws regarding the issuance of cosmetologist licenses to such persons. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

17-26-301. [Repealed.]

Publisher’s Notes. This section, concerning penalties, was repealed by Acts 2007, No. 223, § 12. The section was de-

rived from Acts 1955, No. 358, Art. 2, § 5; 1955, No. 358, Art. 9, § 4; A.S.A. 1947, §§ 71-830, 71-869.

17-26-302. Application for examination and license.

- (a) Each application for admission to examination and each application for a license as a cosmetologist or any branch of cosmetology shall be in writing on blanks prepared and furnished by the Department of Health.
- (b) Each application shall be accompanied by the required fee and shall contain proof of the qualifications of the applicant for examination for registration and license.
- (c) The application shall be verified by the oath of the applicant.

History. Acts 1955, No. 358, Art. 6, § 1; A.S.A. 1947, § 71-839; Acts 2007, No. 223, § 13; 2009, No. 4, § 4.
Amendments. The 2007 amendment deleted “cosmetician or” preceding “cosmetologist” in (a) and made minor punctuation changes.

The 2009 amendment, substituted “Department of Health” for “State Board of Cosmetology” in (a), and made minor stylistic changes.

17-26-303. Examinations generally.

- (a) The examination of applicants for a license in any of the branches or practices of cosmetology shall include both a practical demonstration and written test and shall embrace the subjects concerning the particu-

lar branch or branches, practice, or practices for which a license is applied.

(b) The examination shall not be confined to any special system or method.

(c) The examination shall be consistent in both practical and technical requirements and of sufficient thoroughness to satisfy the Cosmetology Technical Advisory Committee as to the applicant's skill in and knowledge of the practice of the occupation or occupations for which a license is sought.

History. Acts 1955, No. 358, Art. 6, § 2; A.S.A. 1947, § 71-840; Acts 2007, No. 223, § 14.

Amendments. The 2007 amendment,

in (a), deleted "and oral" following "written" and "certificate of registration and" preceding "license"; and deleted former (d) relating to practical demonstrations.

17-26-304. Prerequisites to examination for a cosmetologist, manicurist, or aesthetician.

The Department of Health shall admit to examination for a license as a cosmetologist, manicurist, or aesthetician a person who has made application to the department in proper form, has paid the fee required, and who:

- (1) Is not less than sixteen (16) years of age;
- (2) Has completed two (2) years of high school in the public schools of this state or its equivalent; and
- (3) Has completed one (1) of the following:
 - (A) For a cosmetologist, training of at least one thousand five hundred (1,500) hours;
 - (B) For a manicurist, training of at least six hundred (600) hours;
 - (C) For an aesthetician, training of at least six hundred (600) hours; or
 - (D) The prescribed course of study in cosmetology under the laws of another state whose licensing requirements are equal to or stricter than those in Arkansas.

History. Acts 1955, No. 358, Art. 3, § 2; 1957, No. 48, § 1; 1957, No. 337, § 1; 1961, No. 490, § 3; 1965, No. 403, § 1; 1985, No. 215, § 2; A.S.A. 1947, § 71-832; Acts 2007, No. 223, § 15; 2009, No. 4, § 5.

Amendments. The 2007 amendment rewrote the section heading; and rewrote the section.

The 2009 amendment, in the introductory language, substituted "The Department of Health" for "At any meeting of the State Board of Cosmetology held for the purpose of conducting examination, the board," substituted "department" for "board," and made a minor stylistic change.

17-26-305. [Repealed.]

Publisher's Notes. This section, concerning manicurists — prerequisites to examination, was repealed by Acts 2007, No. 223, § 16. The section was derived

from Acts 1955, No. 358, Art. 5, § 2; 1961, No. 490, § 4; 1985, No. 215, § 5; A.S.A. 1947, § 71-838; Acts 1997, No. 512, § 2.

17-26-306. Electrologists — Prerequisites to examination.

The Department of Health shall admit to examination for a license as an electrologist a person who has made application to the department in proper form, has paid the fee required, and who:

- (1) Is not less than eighteen (18) years of age;
- (2) Has completed the twelfth grade or an accredited senior high school in the public schools of this state or its equivalent; and
- (3) Has completed one (1) of the following:
 - (A) A course of three hundred fifty (350) hours of practical training as a student in conjunction with a course of fifteen hundred (1500) hours in cosmetology or for a licensed cosmetologist;
 - (B) A course of six hundred (600) hours of practical training as a student, when not in conjunction with a regular course in cosmetology or for a licensed cosmetologist, extending over a period of not less than four (4) months under the immediate supervision of a licensed electrologist instructor in a school of cosmetology;
 - (C) The prescribed course of study in electrology under the laws of another state whose licensing requirements are equal to or stricter than those in Arkansas; or
 - (D) Training and practice in electrology for a period as shall be specified by rules of the State Board of Health.

History. Acts 1955, No. 358, Art. 4, § 2; 1965, No. 403, § 2; 1985, No. 215, § 3; A.S.A. 1947, § 71-834; Acts 2007, No. 223, § 17; 2009, No. 4, § 6.

Amendments. The 2007 amendment, in the introductory paragraph, deleted “certificate of registration and” preceding “license” and “by § 17-26-209” following “required”; deleted former (2) and redesignated the remaining subsections accord-

ingly; and in (3)(A) and (3)(B), substituted “cosmetology or for a licensed cosmetologist” for “beauty culture or for licensed beauty operator.”

The 2009 amendment substituted “Department of Health” for “State Board of Cosmetology” in the introductory language and in (3)(D), and made minor stylistic changes.

17-26-307. Electrology instructors — Prerequisites to examination.

The Department of Health shall admit to examination for license as an electrology instructor any person who has made application to the department in proper form, has paid the fee required, and who:

- (1) Is not less than twenty-one (21) years of age;
- (2) Holds a valid Arkansas license as an electrologist; and
- (3) Has had three (3) years of practical experience as an electrologist in the State of Arkansas within the past five (5) years.

History. Acts 1955, No. 358, Art. 4, § 3; A.S.A. 1947, § 71-835; Acts 2007, No. 223, § 18; 2009, No. 4, § 7.

Amendments. The 2007 amendment, in the introductory paragraph, deleted “certificate of registration and” preceding

“license” and “by § 17-26-209” following “required”; and deleted former (2) and redesignated the remaining subsections accordingly.

The 2009 amendment, in the introductory language, substituted “Department

of Health” for “State Board of Cosmetology,” corrected two run-together words, and substituted “department” for “board.”

17-26-308. [Repealed.]

Publisher’s Notes. This section, concerning aestheticians — prerequisites to examination, was repealed by Acts 2007, No. 223, § 19. The section was derived

from Acts 1955, No. 358, Art. 5, § 2; 1961, No. 490, § 4; 1985, No. 215, § 5; A.S.A. 1947, § 71-838.

17-26-309. Examination for cosmetologists and all branches of cosmetology.

Examinations for license as cosmetologists and all other branches of cosmetology shall include a written core and law test and a practical test that embrace all phases of cosmetology as deemed necessary by the Cosmetology Technical Advisory Committee to protect the health, safety, and welfare of the public.

History. Acts 1955, No. 358, Art. 6, § 3; A.S.A. 1947, § 71-841; Acts 2005, No. 207, § 1; 2007, No. 223, § 20.

Amendments. The 2005 amendment added “both a written test ... welfare of the public” and deleted former (1) and (2).

The 2007 amendment substituted “Examination for cosmetologists and all branches of cosmetology” for “Examination for cosmeticians or cosmetologists” in the section heading, and rewrote the section.

17-26-310. Failure to appear for examination.

The Cosmetology Technical Advisory Committee shall promulgate rules concerning an applicant for an examination who fails to appear for the examination.

History. Acts 1955, No. 358, Art. 6, § 8; A.S.A. 1947, § 71-845; Acts 2005, No. 207, § 2; 2007, No. 223, § 21.

Amendments. The 2005 amendment, in (a), deleted “therefore” following “eligibility” in the first sentence and “shall forfeit his or her examination fee” follow-

ing “The applicant” in the second sentence; and deleted “without payment of further examination fee” from the end of (b).

The 2007 amendment rewrote the section.

17-26-311. Eligibility for reexamination.

Anyone failing to pass an examination shall be permitted upon application to take another examination.

History. Acts 1955, No. 358, Art. 6, § 7; 1955, No. 358, Art. 12, § 4; 1985, No. 215,

§ 7; A.S.A. 1947, §§ 71-844, 71-878; Acts 2003, No. 596, § 1.

17-26-312. Issuance of license.

(a) Persons who pass any examination under this chapter shall receive a license from the Cosmetology Technical Advisory Committee.

(b) This license, except for renewal fees, entitles the holder to engage in the practice of the specified branch of cosmetology upon the public in a licensed cosmetological establishment, except as provided in § 17-26-102(3)(B).

History. Acts 1955, No. 358, Art. 6, § 3; A.S.A. 1947, § 71-841; Acts 2007, No. 223, § 22.

Amendments. The 2007 amendment

substituted “Issuance of license” for “Cosmeticians or cosmetologists — Issuance of certificate and license” in the section heading, and rewrote the section.

17-26-313. [Repealed.]

Publisher’s Notes. This section, concerning manicurists, electrologists, aestheticians — issuance of certificate and license, was repealed by Acts 2007, No.

223, § 23. The section was derived from Acts 1955, No. 358, Art. 6, § 5; 1985, No. 215, § 6; A.S.A. 1947, § 71-842.

17-26-314. Specificity of permit or license.

Every permit or license issued by the Cosmetology Technical Advisory Committee shall specify the occupation or occupations that the permit and license entitle the holder to practice.

History. Acts 1955, No. 358, Art. 6, § 6; A.S.A. 1947, § 71-843; Acts 2007, No. 223, § 24.

Amendments. The 2007 amendment substituted “permit” for “certificate” in the

section heading and near the end of the section; and substituted “Every permit or license” for “Every certificate of registration and every license”.

17-26-315. Reciprocity.

Upon application to the Department of Health in the form provided for the particular class of license applied for, accompanied by the required fee, a person licensed as a cosmetologist, electrologist, manicurist, aesthetician, or instructor under the laws of another state shall be granted a license to practice the occupation or occupations in this state not of greater scope than the occupation or occupations for which the applicant was previously licensed in the other state, upon the following conditions:

- (1) That the applicant for a license as a cosmetologist, manicurist, or aesthetician is not less than eighteen (18) years of age, and the applicant for a license as an instructor or electrologist is not less than twenty-one (21) years of age;
- (2) That the applicant holds a current valid license upon application for reciprocity, evidenced by a certified copy of the license and an affidavit from the other state or by such other evidence as the department may require;
- (3) That the applicant has passed a national examination comparable to the examination given in this state; and
- (4) That the applicant passes an Arkansas law examination under this chapter.

History. Acts 1955, No. 358, Art. 10, § 1; 1985, No. 215, § 14; A.S.A. 1947, § 71-870; Acts 1995, No. 771, § 2; 2007, No. 223, § 25; 2009, No. 4, § 8.

Amendments. The 2007 amendment, in the introductory paragraph, deleted “registered or” preceding “licensed” and “a certificate of registration and” preceding

“a license”; rewrote (1); deleted former (2) and redesignated the remaining subsections accordingly; rewrote present (3); and added (4).

The 2009 amendment substituted “Department of Health” for “State Board of Cosmetology” in the introductory language and “department” for “board” in (4).

17-26-316. Display of license.

(a) Every licensee shall:

(1) Display the license in a conspicuous place in his or her principal office, place of business, or place of employment; or

(2) Wear the license on his or her person while practicing cosmetology.

(b) A license may contain a photograph of the licensee.

History. Acts 1955, No. 358, Art. 9, § 1; A.S.A. 1947, § 71-866; Acts 2007, No. 223, § 26; 2009, No. 4, § 9.

Amendments. The 2007 amendment rewrote (b) and added (c).

The 2009 amendment deleted former (a) and redesignated the remaining sections accordingly; substituted “may” for “shall” in (b); and made a minor stylistic change.

17-26-317. Notice of address change.

Every registered cosmetologist manager-operator, cosmetologist, electrologist, manicurist, or aesthetician, within thirty (30) days after changing the address of his or her place of business as designated on the books of the Department of Health, shall notify the department of his or her new place of business. Upon receipt of the notification, the department shall make the necessary changes in the register.

History. Acts 1955, No. 358, Art. 9, § 2; 1985, No. 215, § 13; A.S.A. 1947, § 71-867; Acts 2007, No. 223, § 27; 2009, No. 4, § 10.

Amendments. The 2007 amendment deleted “cosmetician or” preceding “cosmetologist” twice, and substituted “State Board of Cosmetology administrative of-

fice” for “secretary” and “office” for “secretary.”

The 2009 amendment substituted “Department of Health” for “State Board of Cosmetology,” and substituted “department” for “State Board of Cosmetology administrative office” or “office.”

17-26-318. Duplicate license.

A duplicate license shall be issued upon the filing of a statement explaining the loss of the license, verified by the oath of the applicant, and accompanied by the fee prescribed in § 17-26-209. Each duplicate license shall have the word “DUPLICATE” stamped across its face and bear the same date and show the number of the original license.

History. Acts 1955, No. 358, Art. 9, § 3; 1961, No. 490, § 8; A.S.A. 1947, § 71-868.

17-26-319. Expiration, renewal, and reinstatement.

(a) Licenses of cosmetologists, instructors, electrologists, aestheticians, and manicurists shall expire on the licensee's birthday on a biennial basis.

(b) Licenses of schools and establishments shall expire in one (1) of the following ways at the choice of the school or establishment owner:

(1) Annually on December 31;

(2) Biennially on December 31; or

(3) Biennially on the owner's birthday in conjunction with the individual license.

(c) Application for license renewals shall be filed and the fee paid not later than thirty (30) days following the expiration date established in subsection (a) of this section.

(d) A licensee whose license has lapsed for failure to renew and who is or was under the direct supervision of a physician for an extended or long-term condition may request from the Department of Health a waiver of the reinstatement fee.

(e) After five (5) years from the date of its expiration, a license may be reinstated upon the filing of an application as the department may prescribe, the payment of the examination fee, and the passing of the examination required by the department.

(f) The department is authorized and directed to renew, upon application and the payment of the necessary fees, the license of a cosmetologist, manicurist, aesthetician, instructor, or electrologist who is also a veteran of war who possessed the license but permitted it to lapse. The renewal license shall be issued without the applicant's being required to submit to any examination or to meet any additional schooling requirements.

(g)(1) A licensee who is sixty-five (65) years of age or older and has been actively engaged in the practice or teaching of cosmetology for thirty (30) or more years may apply for a lifetime license.

(2) The fee for a lifetime license shall be established by rule of the board.

(3) The receipt of a lifetime license shall not exempt a licensee from:

(A) Complying with any applicable law or rule; and

(B) Receiving a penalty for failing to comply with an applicable law or rule.

History. Acts 1955, No. 358, Art. 12, §§ 1, 2; 1963, No. 502, § 1; 1965, No. 403, § 9; 1985, No. 215, § 15; A.S.A. 1947, §§ 71-875, 71-876, 71-883; Acts 1987, No. 465, §§ 2, 3; 2007, No. 223, § 28; 2009, No. 4, § 11.

Amendments. The 2007 amendment rewrote the section.

The 2009 amendment substituted "Department of Health" for "State Board of Cosmetology" in (d); substituted "department" for "board" throughout (e) and (f); and made a minor stylistic change in (g)(3)(B).

17-26-320. [Repealed.]

Publisher's Notes. This section, concerning refusal, suspension, and revocation, was repealed by Acts 2007, No. 223,

§ 29. The section was derived from Acts 1955, No. 358, Art. 11, §§ 2, 4; A.S.A. 1947, §§ 71-872, 71-874.

17-26-321. Reissuance and reinstatement.

For good cause shown and under such reasonable rules as may be imposed, the Department of Health may reissue or reinstate the license of any person whose license has been previously revoked.

History. Acts 1955, No. 358, Art. 11, § 1; A.S.A. 1947, § 71-871; Acts 2009, No. 4, § 12.

Amendments. The 2009 amendment

deleted "and regulations" following "rules" and substituted "Department of Health" for "State Board of Cosmetology."

17-26-322. [Repealed.]

Publisher's Notes. This section, concerning penalty in lieu of suspension or revocation, was repealed by Acts 2007, No. 223, § 30. The section was derived from

Acts 1979, No. 505, § 1; A.S.A. 1947, § 71-872.1; Acts 1993, No. 1056, § 8; 2003, No. 595, § 2.

17-26-323. [Repealed.]

Publisher's Notes. This section, concerning use of funds from penalties, was repealed by Acts 2009, No. 4, § 13. The

section was derived from Acts 1979, No. 505, § 2; A.S.A. 1947, § 71-872.2; Acts 1993, No. 1056, § 9; 2007, No. 223, § 31.

SUBCHAPTER 4 — COSMETOLOGICAL SCHOOLS AND ESTABLISHMENTS

SECTION.

- 17-26-401. License requirements.
- 17-26-402. Cosmetological establishments — License.
- 17-26-403. School of cosmetology — Application to operate — License.
- 17-26-404. Licensing requirements — Expiration — Renewal.
- 17-26-405. Facilities — Prohibition on use.
- 17-26-406. Refusal or cancellation of school license — Causes.
- 17-26-407. Inspection of school facilities.
- 17-26-408. Duties of school.

SECTION.

- 17-26-409. School supervisor.
- 17-26-410. Instructor qualifications.
- 17-26-411. Instructors — Duties — Number.
- 17-26-412. School term — Cosmetology curriculum.
- 17-26-413. Electrology course.
- 17-26-414. Special programs.
- 17-26-415. Student registration — Reregistration on transfer.
- 17-26-416. [Repealed.]
- 17-26-417. Student work.
- 17-26-418. Cosmetology courses in public schools.

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Effective Dates. Acts 1955, No. 358, Art. 16, § 1: Mar. 24, 1955. Emergency

clause provided: "It has been found and is declared by the General Assembly of Arkansas that confusion and hardship exists among the board members and the cosmetologists of Arkansas because of the uncer-

tainty as to the powers and duties of the board and that this act will materially alleviate the confusion and remove the hardships that exist. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in force from the date of its approval."

Acts 1961, No. 490, § 13: Mar. 16, 1961. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that certain discrepancies exist in the laws covering the practice of cosmetology and uncertainty exists as to the powers and duties of the board, and this act will alleviate the said discrepancies and uncertainty that exist. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health

and safety shall take effect and be in force from the date of its approval."

Acts 1968 (1st Ex. Sess.), No. 57, § 2: Feb. 27, 1968. Emergency clause provided: "It has been found and is declared by the General Assembly of the State of Arkansas that the State Board of Cosmetology is required to register and re-register cosmetological students, that no provision in the law exists under which the agency receives fees for the activity now required of them and that the work load is such that the board cannot economically continue to efficiently operate, and that this act will alleviate this situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in force from the date of its approval."

RESEARCH REFERENCES

ALR. Injury to patron by barber, beauty shop or specialist, barber college or school of beauty culture. 81 A.L.R.4th 444.

17-26-401. License requirements.

(a) No person, firm, or corporation shall conduct or operate a cosmetological establishment, school of cosmetology, beauty parlor, or any other place of business in which any one (1) or any combination of the occupations of a cosmetologist are taught or practiced, except the branch of manicuring as practiced in a barbershop, until licensed under the provisions of this chapter and complying with the provisions of this chapter relating to sanitation.

(b) It shall be unlawful for any person to employ or to allow to be employed any person not licensed by the Cosmetology Technical Advisory Committee in or about a cosmetological establishment as a cosmetologist manager-operator, or as a manicurist, or as an electrologist, or as an aesthetician.

History. Acts 1955, No. 358, Art. 2, § 1; 1955, No. 358, Art. 7, § 3; 1985, No. 215, § 8; A.S.A. 1947, §§ 71-826, 71-850; Acts 2007, No. 223, § 32.

Amendments. The 2007 amendment,

in (a), deleted "cosmetician or" preceding "cosmetologist" and deleted the former last sentence; in (b), deleted "duly registered or" preceding "licensed" and "cosmetician or" preceding "cosmetologist."

17-26-402. Cosmetological establishments — License.

(a) A person, firm, or corporation desiring to operate a cosmetological establishment shall make an application to the Department of Health for a license.

(b) The application shall be accompanied by the required licensing fee.

History. Acts 1955, No. 358, Art. 7, § 2; A.S.A. 1947, § 71-849; Acts 2007, No. 223, § 33; 2009, No. 4, § 14.

Amendments. The 2007 amendment substituted “License” for “Certificate of registration and license” in the section heading; deleted “certificate of registra-

tion and” preceding “license” in (a); and substituted “required licensing” for “annual registration” in (b).

The 2009 amendment substituted “Department of Health” for “State Board of Cosmetology” and made a minor stylistic change.

17-26-403. School of cosmetology — Application to operate — License.

(a) Schools of cosmetology shall be conducted as provided in this subchapter.

(b)(1) A person, firm, or corporation desiring to conduct a school of cosmetology shall apply to the Department of Health for approval.

(2) The Department of Education shall not be required to apply to the Department of Health for approval.

(3)(A) When an application is made after January 1, the portion of the registration fee that the unexpired number of months in the year bears to the entire year, including the month the application is made, shall be paid to the Department of Health.

(B) In such a case the Department of Health shall issue a license for the fractional part of the year.

(c) The license authorizes the school of cosmetology holding it to transact operations in this state during the year or fraction thereof for which it is issued subject to the rules of the department.

(d) Nothing in this section shall be construed as authorization or permission to conduct a school of cosmetology without a valid, existing, and unexpired license.

History. Acts 1955, No. 358, Art. 8, §§ 1, 2; 1965, No. 403, § 12; 1973, No. 566, § 3; A.S.A. 1947, §§ 71-852, 71-853; Acts 2007, No. 223, § 34; 2009, No. 4, § 15.

Amendments. The 2007 amendment substituted “License” for “Certificate of registration and license” in the section heading; in (d), deleted “certificate of registration and” preceding “license” and sub-

stituted “rules” for “rules and regulations”; substituted “certificate of registration” for “license” in (e); and made stylistic changes.

The 2009 amendment subdivided and rewrote (b); deleted former (c), redesignated the remaining subsections accordingly; and substituted “department” for “board” in present (c).

17-26-404. Licensing requirements — Expiration — Renewal.

(a) Licensing for cosmetological establishments and schools of cosmetology expires pursuant to § 17-26-319(b).

(b) An application for renewal of a license shall be filed with the Department of Health, accompanied by the required renewal fee.

(c) Thereupon, the department shall renew the license for the appropriate time period.

(d) A license that has expired for failure of the registrant to renew within the time fixed by this section may for a period of one (1) year thereafter be renewed upon the filing of an application in such form as the department may require and upon payment of the required renewal fee and the delinquency fee.

(e) After one (1) year from the date of its expiration, a certificate may not be renewed, and the establishment or school may again become entitled to a license only upon compliance with all of the provisions of this chapter relating to the original issuance of a license.

History. Acts 1955, No. 358, Art. 12, § 3; 1965, No. 403, § 10; A.S.A. 1947, § 71-877; Acts 2007, No. 223, § 35; 2009, No. 4, § 16.

Amendments. The 2007 amendment substituted “Licensing requirements” for “Certificates of registration” in the section heading; substituted “license” for “certificate” throughout the section; in (a), substituted “Licensing” for “Certificates of registration” and “pursuant to § 17-26-319(b)” for “on December 31 of each year”; in (b), deleted “during the month of Janu-

ary” following “Cosmetology,” and substituted “required renewal fee” for “annual registration fee prescribed by § 17-26-209”; substituted “appropriate time period” for “ensuing year” in (c); and substituted “required renewal fee and the delinquency fee” for annual registration fee and the delinquency fee provided by § 17-26-209” in (d).

The 2009 amendment substituted “Department of Health” for “State Board of Cosmetology” in (b); and substituted “department” for “board” in (c) and (d).

17-26-405. Facilities — Prohibition on use.

(a) No person having charge of a cosmetological establishment or school of cosmetology, whether as an owner or an employee, shall permit any room or part thereof in which any of the branches or practices of cosmetology are conducted, practiced, or taught to be used for sleeping, for residential purposes, or for any other purpose that would tend to make the room unsanitary.

(b) A cosmetological establishment shall have a direct entrance separate and distinct from any entrance in connection with private quarters.

History. Acts 1955, No. 358, Art. 7, § 4; 1965, No. 403, § 5; 1969, No. 400, § 3; A.S.A. 1947, § 71-851; Acts 2007, No. 223, § 36.

Amendments. The 2007 amendment deleted former (c) relating to minimum square footage.

17-26-406. Refusal or cancellation of school license — Causes.

(a) A school shall not be licensed until the Department of Health has had ample opportunity to verify sworn statements as to the actual ownership. In this respect, if false statements are submitted to the department in connection with a license application, this in itself shall constitute sufficient grounds for the refusal to grant any application under this subchapter. If an application is granted and thereafter the department discovers that false statements were made in connection therewith, this shall constitute sufficient grounds for the cancellation of the school license even though the false statements are detected after a license has been issued.

(b)(1) The department may deny a school license to any applicant or licensee upon reasonable evidence that the school or its officials would jeopardize the health and safety of the public.

(2) A school license shall not be issued until the real owner files with the department a statement definitely designating who is authorized to accept service of notice from the department and to transact all business negotiations on behalf of the school, including answers to citations for hearing and compliance with rulings issued by the Cosmetology Technical Advisory Committee.

History. Acts 1955, No. 358, Art. 8, § 6; 1969, No. 400, § 5; A.S.A. 1947, § 71-857; Acts 2007, No. 223, § 37; 2009, No. 4, § 17.

Amendments. The 2007 amendment rewrote the first sentence in (b).

The 2009 amendment substituted “Department of Health” for “State Board of

Cosmetology” in (a); substituted “the department” for “the board” throughout the section; subdivided (b); substituted “committee” for “board” in (b)(2); and made minor stylistic changes.

17-26-407. Inspection of school facilities.

(a) Before any school license under this subchapter shall be finally granted, a second inspection shall be made after the equipment has been installed and before the school is permitted to begin operation.

(b) An applicant shall not be granted a license to operate a school unless the Department of Health finds that sufficient equipment has been installed for the requirements of enrolling a minimum of not fewer than twenty-five (25) bona fide students and that not fewer than twenty-five (25) bona fide full-time student registration requests have been received in the case of any new school.

(c) New schools of cosmetology shall be required to contain not less than two thousand five hundred square feet (2,500 sq. ft.) of floor space in the working area.

History. Acts 1955, No. 358, Art. 8, § 5; 1965, No. 403, § 7; 1969, No. 400, § 4; A.S.A. 1947, § 71-856; Acts 2009, No. 4, § 18.

Amendments. The 2009 amendment

substituted “Department of Health” for “State Board of Cosmetology” in (b), and made minor stylistic changes in (a) and (b).

17-26-408. Duties of school.

Each school shall:

- (1) Possess sufficient apparatus and equipment necessary for the ready and full teaching of all the subjects or practices of cosmetology;
- (2) Maintain licensed instructors competent to impart instruction in all branches or practices of cosmetology;
- (3) Keep a daily record of the attendance of each student and the time devoted by each student to the various practices or branches of cosmetology and electrology;
- (4) Establish grades and hold examinations before issuing diplomas; and
- (5) Fix its tuition at an amount that will enable it to furnish without further charge to the student all cosmetics, materials, and supplies used on the public and in classes. This does not include books and instruments as shall be determined from time to time by the Department of Health.

History. Acts 1955, No. 358, Art. 8, § 11; 1969, No. 400, § 6; A.S.A. 1947, § 71-862; Acts 2009, No. 4, § 19.

made a minor stylistic change in the introductory language; and substituted "Department of Health" for "State Board of Cosmetology" in (5).

Amendments. The 2009 amendment

17-26-409. School supervisor.

Every school shall at all times be in charge of and under the supervision of a licensed cosmetologist manager-operator who has had at least a total of three (3) years of practical experience in the practice or teaching of all of the branches of cosmetology, except the branch of electrology, in a licensed cosmetological establishment or a licensed school of cosmetology and who holds an instructor's license.

History. Acts 1955, No. 358, Art. 8, § 2; A.S.A. 1947, § 71-853; Acts 2007, No. 223, § 38.

deleted "immediate" preceding "supervision" and "cosmetician or" preceding "cosmetologist," and substituted "license" for "permit."

Amendments. The 2007 amendment

17-26-410. Instructor qualifications.

(a) Each person employed in a school to instruct students in the school shall be a licensed cosmetologist, aesthetician, manicurist, or electrologist who:

- (1) Is twenty-one (21) years of age or older and has had six hundred (600) hours of teacher training in a school of cosmetology over a period of not less than four (4) months; and
- (2) Has passed an instructor's examination given by the Department of Health and has received an instructor's license.

(b) A licensed instructor shall not teach outside the profession in which the license to practice allows.

(c) A cosmetology school shall offer an education in cosmetology regardless of whether the curriculum includes a specialty course.

History. Acts 1955, No. 358, Art. 8, § 3; 1961, No. 490, § 5; 1965, No. 403, § 6; 1973, No. 566, § 4; 1975, No. 532, § 3; 1977, No. 420, § 3; A.S.A. 1947, § 71-854; Acts 1987, No. 465, § 1; 2007, No. 223, § 39; 2009, No. 4, § 20.

Amendments. The 2007 amendment added the (a) designation and added (b) and (c); substituted “cosmetologist, aesthetician, manicurist, or electrologist

who” for “cosmetician or cosmetologist who” in (a); in (a)(2), substituted “license” for “permit” and deleted the last sentence; deleted former (a)(3); and made a related change.

The 2009 amendment made a minor stylistic change in the introductory language of (a), inserted “or older” in (a)(1), and substituted “Department of Health” for “State Board of Cosmetology” in (a)(2).

17-26-411. Instructors — Duties — Number.

(a) All instructors shall be continuously engaged in teaching students in theoretical or practical work. Except when instructing a student, an instructor may not practice upon a client, and any instructor who does so is subject to disciplinary action by the Cosmetology Technical Advisory Committee.

(b) The State Board of Health shall promulgate reasonable rules concerning the number of instructors necessary to properly conduct a school of cosmetology.

History. Acts 1955, No. 358, Art. 8, § 4; A.S.A. 1947, § 71-855; Acts 2007, No. 223, § 40; 2009, No. 4, § 21.

Amendments. The 2007 amendment substituted “client” for “patron” in (a).

The 2009 amendment, in (a), substituted “Cosmetology Technical Advisory

Committee” for “State Board of Cosmetology” and made minor stylistic changes; and in (b), substituted “State Board of Health” for “board” and deleted “and regulations” following “rules.”

17-26-412. School term — Cosmetology curriculum.

(a) Each school shall maintain a school term of not less than one thousand five hundred (1,500) hours, instruction of which shall not be in excess of ten (10) hours per day and six (6) days per week during the course. The school shall maintain a course of practical training and technical instruction equal to the requirements for examination for a license as a cosmetologist.

(b) It shall so arrange the courses devoted to each branch or practice of cosmetology as the Department of Health may from time to time adopt as the course to be followed by the schools.

History. Acts 1955, No. 358, Art. 8, § 8; 1961, No. 490, § 6; 1965, No. 403, § 3; A.S.A. 1947, § 71-859; Acts 2007, No. 223, § 41; 2009, No. 4, § 22; 2009, No. 704, § 1.

Amendments. The 2007 amendment substituted “Cosmetology” for “General” in the section heading; in (a), inserted “and six (6) days per week during the course” and substituted “license as a cos-

metologist” for “certificate of registration and license as a cosmetician or cosmetologist”; deleted former (b); and redesignated the remaining subdivision accordingly.

The 2009 amendment by No. 4 made a minor stylistic change in (a); and substituted “Department of Health” for “State Board of Cosmetology” in (b).

The 2009 amendment by No. 704 substituted “ten (10)” for “eight (8)” in (a).

17-26-413. Electrology course.

(a)(1) An electrology course established by a school of cosmetology shall consist of three hundred fifty (350) hours or six hundred (600) hours of practical training and technical instruction that shall extend over a period of not less than two (2) months for a three-hundred-fifty-hour course and four (4) months for a six-hundred-hour course.

(2) In no event shall the training extend over a period of more than six (6) months from the date of initial enrollment.

(b) The course shall be in accordance with a curriculum established by the Department of Health.

History. Acts 1955, No. 358, Art. 8, § 9; 1985, No. 215, § 9; A.S.A. 1947, § 71-860; Acts 2009, No. 4, § 23.

subdivided (a); and substituted "Department of Health" for "State Board of Cosmetology" in (b).

Amendments. The 2009 amendment

17-26-414. Special programs.

(a) Instruction shall not exceed eight (8) hours per day and six (6) days per week during the program.

(b) When a student completes the required number of hours for a special program and reenrolls for a cosmetology program or when a student transfers from a special program to a cosmetology program prior to completion of the special program, he or she shall be given credit for the number of hours spent in connection with the special program, but not to exceed the maximum hours required thereof, toward the satisfaction of the time required for the cosmetology program as determined by rules of the Cosmetology Technical Advisory Committee.

History. Acts 1955, No. 358, Art. 8, § 10; A.S.A. 1947, § 71-861; Acts 2007, No. 223, § 42.

Amendments. The 2007 amendment substituted "programs" for "courses — Credit" in the section heading; added (a) and designated the existing provisions as

(b); and in (b), substituted "When" for "Where," "program" for "course," "cosmetology program" for "general course" throughout and deleted "and regulations" following "rules"; and made related changes.

17-26-415. Student registration — Reregistration on transfer.

(a)(1) All students of cosmetology, manicuring, electrology, aesthetics, and instructor training shall be registered with the Department of Health before accredited hours can be obtained.

(2) The enrollment application shall be accompanied by a copy of a method of identification containing a photograph of the applicant.

(3) A student shall not earn hours prior to the date in which the department has issued a student permit.

(b) A student who has completed the registration process and whose information is on file with the department shall complete a reenrollment form without submitting additional documents other than the

student permit fee and a method of identification containing a photograph of the student.

History. Acts 1955, No. 358, Art. 1, § 9; 1955, No. 358, Art. 8, § 14; 1965, No. 403, § 8; 1968 (1st Ex. Sess.), No. 57, § 1; 1985, No. 215, § 11; A.S.A. 1947, §§ 71-822, 71-865; Acts 2007, No. 223, § 43; 2009, No. 4, § 24.

Amendments. The 2007 amendment

substituted “instructor” for “teacher” in (a)(1); added (a)(2) and (a)(3); and rewrote (b).

The 2009 amendment substituted “Department of Health” for “State Board of Cosmetology” in (a)(1), and substituted “department” for “board” in (a)(3) and (b).

17-26-416. [Repealed.]

Publisher’s Notes. This section, concerning partial credit, was repealed by Acts 2007, No. 223, § 44. The section was derived from Acts 1955, No. 358, Art. 1,

§ 9; 1955, No. 358, Art. 8, § 14; 1965, No. 403, § 8; 1968 (1st Ex. Sess.), No. 57, § 1; 1985, No. 215, § 12; A.S.A. 1947, §§ 71-822, 71-865.

17-26-417. Student work.

(a) In each licensed school of cosmetology:

(1) A student for a license as a cosmetologist, after one hundred fifty (150) hours of instruction, may engage, in the school as a student, in work connected with any branch or any combination of the branches of cosmetology taught in the school upon a client who is paying for service or materials;

(2) A student for a license as a manicurist, after sixty (60) hours of instruction, may engage, in the school as a student, in work connected with manicuring taught in the school upon a client who is paying for service or materials;

(3) A student for a license as an aesthetician, after sixty (60) hours of instruction, may engage, in the school as a student, in work connected with aesthetics taught in the school upon a client who is paying for service or materials; and

(4) A student for a license as an electrologist, after sixty (60) hours of instruction, may engage, in the school as a student, in work connected with electrology taught in the school upon a client who is paying for service or materials.

(b) A student may not engage in any work upon a client who is paying for service or materials until he or she has had the required number of hours of instruction.

(c) A school shall not advertise student work to the public through any medium unless the work is designated as student work.

(d)(1) A school may allow a student to volunteer in charity or special events held outside the school if the following conditions are met:

(A) The student agrees to participate;

(B) The student has completed three-quarters ($\frac{3}{4}$) of the course of study;

(C) The student is accompanied by and acts under the direct supervision of a licensed instructor; and

(D) The student receives no credit hours toward the course of study.

(2) Documentation shall be maintained in the student's school file outlining the date, name, and location of the event and the number of hours volunteered.

(3) A school shall provide a thirty-day notice to the Department of Health, unless the special event involves a natural disaster as proclaimed by the Governor.

(4) A student shall not provide services to an elderly person who is confined to a hospital or nursing home.

(e)(1) A student providing services under this section shall apply for a student permit from the department.

(2) The State Board of Health shall promulgate rules concerning the issuance of student permits.

(3) A student permit shall contain a photograph of the student.

(4) The student permit shall be:

(A) Maintained by the owner of the school attended by the student during the student's enrollment; and

(B) Returned to the department along with a copy of the student's Certificate of Training upon the conclusion of the student's enrollment in the school.

History. Acts 1955, No. 358, Art. 8, §§ 6, 13; 1961, No. 490, § 7; 1969, No. 400, § 5; 1985, No. 215, § 10; A.S.A. 1947, §§ 71-857, 71-864; Acts 2007, No. 223, § 45; 2009, No. 4, § 25.

Amendments. The 2007 amendment substituted "Student" for "Paid student" in the section heading; substituted "client" for "patron" throughout the section; deleted "cosmetician or" preceding "cosme-

tologist" in (a)(1); substituted "sixty (60)" for "thirty-five (35)" in (a)(2); and added (d) and (e).

The 2009 amendment substituted "Department of Health" for "State Board of Cosmetology" in (d)(3) and (e); substituted "the department" for "the board" in (e)(1) and (e)(4)(B); substituted "State Board of Health" for "board" in (e)(2); and made minor stylistic changes.

17-26-418. Cosmetology courses in public schools.

(a)(1) All public educational institutions operating cosmetological schools shall comply with the standards and rules promulgated by the State Board of Health.

(2)(A) However, the responsibility for approval of cosmetological schools in public educational institutions shall be the sole responsibility of the State Board of Career Education.

(B) In approving a cosmetological school in a public educational institution, the State Board of Career Education shall use the same application process and requirements as the State Board of Health uses for approval of all other cosmetological schools.

(b) Such schools shall not be required to obtain a license as prescribed in this chapter.

(c) Each person who successfully completes the courses in cosmetology given in a school under the public school system of this state is eligible for a license under this chapter the same as though he or she had graduated from a licensed private school of cosmetology approved

by the State Board of Health. For this purpose, successful completion of courses in cosmetology given in public schools equal to and the equivalent of the courses required to be given in licensed private schools of cosmetology approved by the State Board of Health shall be deemed to be the fulfillment of the requirements of this chapter in regard to completion of courses in licensed schools of cosmetology approved by the State Board of Health.

History. Acts 1955, No. 358, Art. 8, § 14; 1965, No. 403, § 8; 1969, No. 400, § 9; A.S.A. 1947, §§ 71-865, 71-884; Acts 2007, No. 223, § 46; 2009, No. 4, § 26; 2009, No. 705, § 1.

Amendments. The 2007 amendment substituted “State Board of Workforce Education and Career Opportunities” for “State Board of Education” in (a); and substituted “a license” for “registration and license” in (c).

The 2009 amendment by No. 4 substituted “State Board of Health” for “State Board of Cosmetology” in (a) and (c); and

in (c), substituted “Department of Health” for “State Board of Cosmetology,” substituted “the department” for “the State Board of Cosmetology,” and made a minor stylistic change.

The 2009 amendment by No. 705, in (a), inserted (a)(2)(B), redesignated the remaining text accordingly, deleted “and regulations” following “rules” in (a)(1), and made related changes; and in the last sentence in (c), substituted “State Board” for “Department” and “State Board of Health” for “department.”

CHAPTER 27

COUNSELORS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS BOARD OF EXAMINERS IN COUNSELING.
3. LICENSING.
4. LICENSING ALCOHOLISM AND DRUG ABUSE COUNSELORS.

Publisher’s Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-24-101 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-27-101. Policy — Purpose.
 17-27-102. Definitions.
 17-27-103. Exemptions.

SECTION.

- 17-27-104. Prohibitions — Penalties.
 17-27-105. Injunctions.
-

Effective Dates. Acts 1979, No. 1014, § 3; Apr. 17, 1979. Emergency clause provided: “It is hereby found and determined by the General Assembly that it would be highly impractical to apply the provisions

of Act 593 of 1979 to persons engaged exclusively in counseling individuals or groups concerning weight loss or control or nutrition education; that application of the act to such person would create a

serious hardship on such persons; and that this act is designed to exempt such persons from the provisions of this act and should be given effect immediately. Therefore, an emergency is hereby declared to

exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

17-27-101. Policy — Purpose.

(a) It is declared to be the policy of this state that activities of those persons who render service to the public in the counseling area and use the title "licensed professional counselor", "licensed associate counselor", "licensed marriage and family therapist", or "licensed associate marriage and family therapist" should be regulated for the protection of public health, safety, and welfare.

(b) It is the purpose and intent of this chapter to:

(1) Provide for the regulation of the practice of counseling in the State of Arkansas;

(2) Create a board of examiners in counseling and prescribe the duties and powers of the board;

(3) Provide for the examination and licensure of counselors;

(4) Fix penalties for the violation of this chapter;

(5) Impose license fees and provide for the use of funds derived therefrom; and

(6) Provide for the regulation of the use of the titles "licensed professional counselor", "licensed associate counselor", "licensed marriage and family therapist", and "licensed associate marriage and family therapist" for those who offer counseling services to the public.

History. Acts 1979, No. 593, § 1; A.S.A. 1947, § 71-5201; Acts 1997, No. 244, § 1.

17-27-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Board" means the Arkansas Board of Examiners in Counseling;

(2) "Counseling services" means those acts and behaviors coming within the practice of counseling, as defined in this section;

(3) "Licensed associate counselor" means any person who:

(A) Holds himself or herself out to the public by any title or description of services incorporating the words "licensed associate counselor";

(B) Offers to render counseling services to individuals, groups, organizations, corporations, institutions, government agencies, or the general public for monetary remuneration or otherwise implying that he or she is licensed, trained, experienced, or expert in counseling; and

(C) Holds a current, valid license to practice counseling under the supervision of a licensed professional counselor. Nothing in this

definition shall be construed to include those professions excluded by § 17-27-103;

(4) “Licensed associate marriage and family therapist” means any person who:

(A) Holds himself or herself out to the public by any title or description of services incorporating the words “licensed associate marriage and family therapist”;

(B) Offers to render marriage and family therapy services to individuals, couples, and families, singularly or in groups, for monetary remuneration; and

(C) Holds a current, valid license to practice marriage and family therapy services under the supervision of a licensed marriage and family therapist. Nothing in this definition shall be construed to include those professions excluded by § 17-27-103;

(5) “Licensed marriage and family therapist” means any person who:

(A) Holds himself or herself out to the public by any title or description of services incorporating the words “licensed marriage and family therapist”;

(B) Offers to render marriage and family therapy services to individuals, groups, couples, families, organizations, corporations, institutions, government agencies, or the general public for monetary remuneration or otherwise implying that he or she is licensed, trained, experienced, or expert in marriage and family therapy; and

(C) Holds a current, valid license to practice marriage and family therapy, with the exception of those professions listed in § 17-27-103;

(6) “Licensed professional counselor” means any person who:

(A) Holds himself or herself out to the public by any title or description of services incorporating the words “licensed professional counselor”;

(B) Offers to render counseling services to individuals, groups, organizations, corporations, institutions, government agencies, or the general public for monetary remuneration or otherwise, implying that he or she is licensed, trained, experienced, or expert in counseling; and

(C) Holds a current, valid license to practice counseling, with the exception of those professions listed in § 17-27-103;

(7)(A) “Marriage and family therapy” means the use of scientific and applied marriage and family theories, methods, and procedures for the purpose of describing, evaluating, and modifying marital, family, and individual behavior within the context of marital and family systems, including the context of marital formation and dissolution.

(B) Marriage and family therapy is based on systems, theories, marriage and family development, normal and dysfunctional behavior, human sexuality, and psychotherapeutic, marital, and family therapy theories and techniques and includes the use of marriage and family therapy theories and techniques in the evaluation, assessment, and treatment of intrapersonal or interpersonal dysfunctions within the context of marriage and family systems.

(C) Marriage and family therapy may also include clinical research into more effective methods for the treatment and prevention of the above-named conditions.

(D) Nothing in this definition or in this chapter shall be construed as precluding licensed professional counselors or licensed associate counselors from rendering these services; and

(8) "Practice of counseling" means rendering or offering to render to individuals, groups, organizations, or the general public any service involving the application of principles, methods, or procedures of the counseling profession which include, but are not restricted to:

(A) "Counseling", which means assisting an individual or groups, through the counseling relationship, to develop understandings of personal problems, to define goals, and to plan action reflecting his or her interests, abilities, aptitudes, and needs as these are related to personal social concerns, educational progress, and occupations and careers;

(B) "Appraisal activities", which means selecting, administering, scoring, and interpreting instruments designed to assess an individual's aptitudes, attitudes, abilities, achievements, interests, and personal characteristics but shall not include the use of projective techniques in the assessment of personality;

(C) "Consulting", which means interpreting or reporting scientific fact or theory to provide assistance in solving current or potential problems of individuals, groups, or organizations;

(D) "Referral activities", which means the evaluating of data to identify problems and to determine the advisability of referral to other specialists; and

(E) "Research activities", which means reporting, designing, conducting, or consulting on research in counseling with human subjects.

History. Acts 1979, No. 593, § 3; A.S.A. 1947, § 71-5203; Acts 1997, No. 244, § 1.

CASE NOTES

Licensed Professional Counselor.

Substantial evidence existed to support findings that a counselor was not authorized to perform four projective tests, and was not licensed in the appraisal spe-

cialty; revocation of her license was therefore proper. *Arkansas Bd. of Exm'rs. v. Carlson*, 334 Ark. 614, 976 S.W.2d 934 (1998).

17-27-103. Exemptions.

(a) This chapter shall not be applicable to persons engaged in counseling individuals or groups concerning weight loss, weight control, or nutrition education, nor to persons whose counseling activities are confined to the area of alcohol and drug abuse.

(b) Nothing in § 17-27-104 shall be construed to preclude the advertising of services or to limit:

(1) The professional pursuits of administrators, teachers, and school counselors certified by the Department of Education within the scope of their duties in recognized public and private schools;

(2) Nonresident persons engaged in consulting or research activities in counseling for a period not greater than thirty (30) days in a calendar year;

(3) Clergymen insofar as their activities and services are a part of the official duties in salaried positions;

(4) Practitioners of medicine;

(5) Psychologists;

(6) Social workers;

(7) Listed Christian Science practitioners insofar as their activities and services are a part of the official duties;

(8) Individuals offering volunteer services who are approved by the organization or agency for whom the service is rendered;

(9) Persons in the employ of the federal, state, or local government or accredited institutions of higher education, insofar as their activities and services are a part of the official duties in salaried positions; or

(10) Other professionals, provided that:

(A) Such persons hold valid licenses, certificates, or registrations in the State of Arkansas and are operating within the scope of their professional duties; and

(B) The title “licensed professional counselor”, “licensed associate counselor”, “licensed marriage and family therapist”, or “licensed associate marriage and family therapist” is not used.

(c) Students engaged in counselor training programs and other persons preparing for the profession of licensed counselor may perform as part of their training the functions specified in § 17-27-102, provided that such functions are performed under supervision of a licensed professional counselor.

History. Acts 1979, No. 593, §§ 15, 18;
1979, No. 1014, § 1; A.S.A. 1947, §§ 71-
5215, 71-5218; Acts 1997, No. 244, § 1.

17-27-104. Prohibitions — Penalties.

(a)(1) A person who holds himself or herself out to the public as being engaged in the practice of counseling or marriage and family therapy as defined in § 17-27-102 or represents himself or herself by the title “licensed professional counselor”, “licensed associate counselor”, “licensed marriage and family therapist”, or “licensed associate marriage and family therapist” and shall not then possess in full force and effect a valid license to practice counseling under this chapter is guilty of:

(A) For a first offense, a Class A misdemeanor; and

(B) For a second or subsequent offense, a Class D felony.

(2)(A) Each violation and conviction shall be deemed a separate offense.

(B) Notwithstanding the limits imposed for a Class A misdemeanor or a Class D felony as appropriate, if the defendant has derived pecuniary gain in the form of client fees received for services in violation of this chapter, the fees will be refunded.

(3) In addition to the criminal penalties provided under this section and in addition to any other laws under which a person may obtain relief, a person aggrieved or damaged by a violation of this section has a civil cause of action against the defendant for injunctive and other curative relief and may also recover:

(A) The greater of ten thousand dollars (\$10,000) or the actual damages caused by the violation;

(B) Court costs;

(C) Reasonable attorney's fees;

(D) Costs and expenses reasonably related to the expenses of investigating and bringing the civil action; and

(E) Exemplary or punitive damages in an amount determined by the fact finder.

(b) No firm, partnership, or corporation may offer to the public or other firms, partnerships, or corporations any counseling services as specified in § 17-27-102 unless those services are performed or supervised by individuals fully and validly licensed under this chapter.

History. Acts 1979, No. 593, § 15; A.S.A. 1947, § 71-5215; Acts 1997, No. 244, § 1; 2009, No. 1298, § 1.

Amendments. The 2009 amendment rewrote (a)(1) and (a)(2), and added (a)(3).

Cross References. Penalties for misdemeanors, §§ 5-4-201, 5-4-401.

17-27-105. Injunctions.

The courts of this state are vested with the jurisdiction and power to enjoin the unlawful practice of counseling or false representation as a licensed counselor in any proceeding brought by the Arkansas Board of Examiners in Counseling or by any member thereof or by any citizen of this state.

History. Acts 1979, No. 593, § 16; A.S.A. 1947, § 71-5216.

SUBCHAPTER 2 — ARKANSAS BOARD OF EXAMINERS IN COUNSELING

SECTION.

17-27-201. Creation — Members.

17-27-202. Officers and proceedings.

SECTION.

17-27-203. Duties and powers.

Effective Dates. Acts 1983, No. 131, § 6 and No. 135, § 6: Feb. 10, 1983. Emergency clauses provided: "It is hereby found and determined by the General Assembly that state boards and commissions exist

for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older

population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as to questions coming before such bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reim-

bursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

17-27-201. Creation — Members.

(a) There is created a board to be known as the “Arkansas Board of Examiners in Counseling”, consisting of nine (9) members who shall be appointed by the Governor.

(b) Appointments shall be made so as to ensure that the board consists of citizens of the United States, residents of Arkansas, at least one (1) member of each sex, and at least one (1) member of an ethnic minority.

(c)(1) The composition of the board shall include:

(A)(i) Six (6) licensed or licensable counselors, three (3) of whom are practicing counselors and three (3) of whom are counselor educators. One (1) of the six (6) shall also be a licensed marriage and family therapist, if available.

(ii) These members shall be appointed from a list submitted to the Governor not later than November 1 of each year by the Executive Committee of the Arkansas Counseling Association or the Executive Committee of the Arkansas Mental Health Counselors Association;

(B)(i) One (1) licensed marriage and family therapist.

(ii) This member shall be appointed from a list submitted to the Governor not later than November 1 of each year by the Board of Directors of the Arkansas Association for Marriage and Family Therapists;

(C)(i) One (1) member from the general public who is not licensed or licensable and not actively engaged in or retired from the profession of counseling who shall represent consumers.

(ii) This member shall be appointed from a list submitted to the Governor not later than November 1 of each year by the Executive Committee of the Arkansas Counseling Association or the Executive

Committee of the Arkansas Mental Health Counselors Association; and

(D)(i) One (1) member who shall represent the elderly.

(ii) This member shall be sixty (60) years of age or older and not actively engaged in or retired from the profession of counseling.

(iii) He or she shall be appointed from the state at large subject to confirmation by the Senate and shall be a full voting member but shall not participate in the grading of examinations.

(2) The same person may not be both the consumer representative and the representative of the elderly.

(d) Board members shall be appointed for three-year terms.

(e)(1) Vacancies for the unexpired terms of the professional members and the consumer member shall be filled by the Governor from candidates submitted within thirty (30) days of the vacancy by the Executive Committee of the Arkansas Counseling Association or the Executive Committee of the Arkansas Mental Health Counselors Association and the Board of Directors of the Arkansas Association for Marriage and Family Therapists.

(2) The appointments shall be made within thirty (30) days after the candidates' names have been submitted.

(f) Any board member may be removed by the Governor after written notice and a hearing for incapacity, incompetence, neglect of duty, or malfeasance in office.

(g) Board members shall be ineligible for reappointment for a period of three (3) years following completion of their terms.

(h)(1) The members shall immediately and before performing public duties take the constitutional oath of office.

(2)(A) Members shall file the oath in the office of the Governor, who upon receiving it shall issue to each member a certificate of appointment.

(B) Each member may receive expense reimbursement in accordance with § 25-16-901 et seq., provided that the expenses shall in no case exceed funds available to the board.

History. Acts 1979, No. 593, §§ 5, 6; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-623 — 6-626, 71-5205, 71-5206; Acts 1997, No. 244, § 2; 1997, No. 250, § 134; 2003, No. 870, § 1.

Publisher's Notes. The terms of the

members of the Arkansas Board of Examiners in Counseling, other than the representative of the elderly, are arranged so that three terms expire every third year and two terms expire in each of the two intervening years.

17-27-202. Officers and proceedings.

(a) The Arkansas Board of Examiners in Counseling shall organize within thirty (30) days following the appointment of any new members by the Governor on January 2 of each year.

(b) The board shall elect a chair and a secretary from its members to serve for terms of one (1) year.

(c) The board shall hold at least one (1) meeting each year. Additional meetings may be held at the discretion of the Chair of the Arkansas

Board of Examiners in Counseling or upon the written request of any three (3) members of the board.

(d) Five (5) members of the board shall at all times constitute a quorum.

(e) The board shall adopt a seal which must be affixed to all licenses issued by the board.

History. Acts 1979, No. 593, § 6; A.S.A. 1947, § 71-5206.

17-27-203. Duties and powers.

(a) The Arkansas Board of Examiners in Counseling shall perform those duties and have those powers as this chapter prescribes and confers upon it.

(b) The board shall adopt rules, regulations, and procedures as it deems necessary for the performance of its duties.

(c) The board shall adopt the Code of Ethics of the American Counseling Association and any revisions or additions deemed appropriate by this board to govern appropriate practice or behavior referred to in this chapter.

(d) The board shall adopt the Code of Ethics of the American Association of Marriage and Family Therapy to govern licensed marriage and family therapists and licensed associate marriage and family therapists.

(e) The board is required to charge an application fee determined by the board.

(f) The board shall be empowered to accept grants from foundations and institutions to carry on its functions and to hire assistants as are necessary to perform its activities.

History. Acts 1979, No. 593, §§ 2, 4, 6; A.S.A. 1947, §§ 71-5202, 71-5204, 71-5206; Acts 1997, No. 244, § 3.

SUBCHAPTER 3 — LICENSING

SECTION.

- 17-27-301. Licensed professional counselor — Qualifications.
- 17-27-302. Licensed associate counselor — Qualifications.
- 17-27-303. Licensed marriage and family therapist — Qualifications — Application before January 1, 1998.
- 17-27-304. Licensed marriage and family therapist — Qualifications — Application after January 1, 1998.
- 17-27-305. Licensed associate marriage and family therapist — Qualifications.

SECTION.

- 17-27-306. Examination.
- 17-27-307. Renewal.
- 17-27-308. Reciprocity.
- 17-27-309. Suspension or revocation.
- 17-27-310. Fees — Disposition of funds.
- 17-27-311. Privileged communication.
- 17-27-312. Application of laws pertaining to licensed professional counselors.
- 17-27-313. Criminal background checks.

Effective Dates. Acts 1997, No. 1317, § 16: Oct. 1, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that Arkansas children and their parents or guardians should be secure in the knowledge that professional persons who have direct contact with children do not have criminal records and are not a potential threat to the safety of their children; and that an increasing number of incidents are occurring where professional persons are abusing children entrusted into their care; and that in some cases these incidents could have been avoided had the persons been subjected to a criminal background check. It is further found and determined that, in some instances, allegations of employee criminal misconduct involving children are not being investigated. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on October 1, 1997."

Acts 2003, No 753, § 2: Mar. 27, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the current guidelines used for licensure of new applicant is not current under the national accrediting agency standards that became effective January 1, 2001; and that this act is immediately necessary because new applicants need to be licensed to ensure

that adequate counseling professionals are available to serve the needs of the citizens of the state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2003, No. 1206, § 9: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2003 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2003 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2003."

17-27-301. Licensed professional counselor — Qualifications.

The Arkansas Board of Examiners in Counseling shall issue a license as a licensed professional counselor to each applicant who files an application upon a form and in the manner that the board prescribes accompanied by a fee as set by the board and who furnishes satisfactory evidence of the following to the board:

- (1) The applicant is not a minor under the laws of Arkansas;
- (2) The applicant is highly regarded in personal character and professional ethics;
- (3) The applicant is not in violation of any of the provisions of this chapter and the rules and regulations adopted under this chapter;
- (4) The applicant has applied for a criminal background check and has not been found guilty of, or pleaded guilty or nolo contendere to, any of the offenses listed in § 17-27-313(e);
- (5)(A) The applicant has received a graduate degree from a regionally accredited institution of higher education that is primarily

professional counseling in content and has accumulated the graduate semester hours that meet the academic and training content standards established by the board.

(B) The board shall use the standards for the preparation of counselors prepared by that special professional association nationally as a guide in establishing the standards for counseling;

(6)(A) The applicant has three (3) years of supervised full-time experience in professional counseling acceptable to the board.

(B) One (1) year of experience may be gained for each thirty (30) graduate semester hours earned beyond the master's degree, provided that the hours are clearly related to the field of counseling and are acceptable to the board.

(C) In no case may the applicant have less than one (1) year of professional experience; and

(7)(A) The applicant has declared special competencies and demonstrated professional competence in specialty areas by having passed a written, oral, or situational examination or any combination thereof as the board will prescribe.

(B) Upon the examination of credentials, the board, by a majority of the board members present and voting, may consider those credentials adequate evidence of professional competence and recommend to the Chair of the Arkansas Board of Examiners and Counseling that a license be approved in that specialty.

History. Acts 1979, No. 593, § 8; A.S.A. 1997, No. 244, § 4; 1997, No. 1317, § 2; 1947, § 71-5208; Acts 1993, No. 1219, § 6; 2003, No. 753, § 1.

CASE NOTES

Scope of Practice.

Substantial evidence supported the determination that a professional counselor was not licensed in the appraisal specialty and that, therefore, she was not authorized to perform 4 appraisal tests that she administered to a patient where the coun-

selor admitted that she was required to confine her practice to the ambit of her statement of intent and that she did not have a specialty license. *Arkansas Bd. of Exm'rs. v. Carlson*, 334 Ark. 614, 976 S.W.2d 934 (1998).

17-27-302. Licensed associate counselor — Qualifications.

(a) The Arkansas Board of Examiners in Counseling shall issue a license of licensed associate counselor to each applicant who meets the requirements established in § 17-27-301, with the exception of § 17-27-301(6).

(b) The licensed associate counselor may practice only under direct supervision of a licensed professional counselor.

(c) The plan for supervision of the licensed associate counselor must be approved by the board prior to any actual performance of counseling on the part of the licensed associate counselor.

(d) Any licensed associate counselor may petition the board for licensure review for the licensed professional counselor, provided that the requirements of § 17-27-301(6) have been completed.

History. Acts 1979, No. 593, § 9; A.S.A. 1947, § 71-5209; Acts 1997, No. 244, § 4; 1997, No. 1317, § 3.

17-27-303. Licensed marriage and family therapist — Qualifications — Application before January 1, 1998.

The Arkansas Board of Examiners in Counseling shall issue a license as a licensed marriage and family therapist to each applicant who files an application upon a form and in the manner as the board prescribes accompanied by a fee as set by the board and who furnishes satisfactory evidence of the following to the board:

- (1) The applicant is not a minor under the laws of Arkansas;
- (2) The applicant is highly regarded in personal character and professional ethics;
- (3) The applicant is not in violation of any of the provisions of this chapter and the rules and regulations adopted hereunder;
- (4) The applicant has received a graduate degree in either marriage and family therapy or a related field with specific course work in marriage and family therapy as approved by the board; and
- (5) The applicant has at least five (5) years of clinical experience in the practice of marriage and family therapy or clinical membership in the American Association of Marriage and Family Therapy or the National Academy of Certified Family Counselors or certification by an appropriate professional organization, as defined by the board.

History. Acts 1997, No. 244, § 4.

A.C.R.C. Notes. Former § 17-27-303 has been renumbered as § 17-27-306.

17-27-304. Licensed marriage and family therapist — Qualifications — Application after January 1, 1998.

The Arkansas Board of Examiners in Counseling shall issue a license as a marriage and family therapist to each applicant who files an application after January 1, 1998, upon a form and in a manner as the board prescribes accompanied by a fee as set by the board if he or she meets the qualifications set forth in § 17-27-303(1)-(3) and if the applicant provides satisfactory evidence to the board that he or she:

- (1) Meets educational experience qualifications as follows:

(A) **EDUCATIONAL REQUIREMENTS.** A master's degree or a doctoral degree in marriage and family therapy from a regionally accredited educational institution or a graduate degree in the allied fields referred to in § 17-27-303(4) from a regionally accredited educational institution and graduate level course work which is equivalent to a master's degree in marriage and family therapy as determined by the board; and

(B) **EXPERIENCE REQUIREMENTS.** The applicant has three (3) years of supervised full-time experience in marriage and family therapy acceptable to the board. One (1) year of experience may be gained for each thirty (30) graduate semester hours earned beyond the master's

degree, provided that the hours are clearly related to the field of marriage and family therapy and are acceptable to the board. In no case may the applicant have less than one (1) year of professional supervised experience; and

(2) Passes an examination or examinations administered by the board.

History. Acts 1997, No. 244, § 4.

A.C.R.C. Notes. Former § 17-27-304
has been renumbered as § 17-27-307.

17-27-305. Licensed associate marriage and family therapist — Qualifications.

(a) The Arkansas Board of Examiners in Counseling shall issue a license as a licensed associate marriage and family therapist to each applicant who meets the requirements of § 17-27-304, with the exception of § 17-27-304(1)(B).

(b) The licensed associate marriage and family therapist may practice only under direct supervision of a licensed marriage and family therapist.

(c) The plan for supervision of the licensed associate marriage and family therapist must be approved by the board prior to any actual performance of marriage and family therapy by the licensed associate marriage and family therapist.

(d) Any licensed associate marriage and family therapist may petition the board for licensure review for licensed marriage and family therapist, provided the requirements of § 17-27-304(2) have been met.

History. Acts 1997, No. 244, § 4.

A.C.R.C. Notes. Former § 17-27-305
has been renumbered as § 17-27-308.

17-27-306. Examination.

(a)(1) The place of examination shall be designated in advance by the Arkansas Board of Examiners in Counseling.

(2) The examination shall be given:

(A) Annually at the time and place and under the supervision as the board may determine; and

(B) Specifically at other times when in the opinion of the board the number of applicants warrants.

(b) The examination shall require that the applicant demonstrate his or her knowledge and application thereof in those areas deemed relevant to his or her specialty and identify those services he or she intends to offer to the public.

(c) To ensure impartiality, written examination documents shall be identified by number. No paper shall be marked in the name of any applicant.

(d) The board will report the results of the examination and recommend to the Chair of the Arkansas Board of Examiners in Counseling action to be taken.

(e) The board is required to preserve examination materials, an accurate transcript of the questions and answers to any examination, and the applicant's performance on each section as part of its records for a period of two (2) years following the date of the examination.

(f)(1) In the event that an applicant fails to pass the entire examination, he or she may reapply and shall be allowed to take a subsequent examination.

(2) An applicant who has failed two (2) successive examinations may not reapply for two (2) years from the date of the last examination.

History. Acts 1979, No. 593, § 11; formerly codified as § 17-27-303. Former A.S.A. 1947, § 71-5211; Acts 1997, No. § 17-27-306 has been renumbered as 244, § 4. § 17-27-309.

A.C.R.C. Notes. This section was for-

17-27-307. Renewal.

(a)(1) Biannually at the time of renewal, counselors and licensed marriage and family therapists licensed under this chapter shall be required to submit a license renewal fee to be established by the Arkansas Board of Examiners in Counseling.

(2)(A) Failure to pay the biannual renewal fee within the time stated shall automatically suspend the right of any licensee to practice while delinquent.

(B) The lapsed license may be renewed within a period of one (1) year after payment of all fees in arrears.

(b) No license shall be renewed unless the renewal request is accompanied by evidence satisfactory to the board of the completion during the previous twenty-four (24) months of relevant professional or continued educational experience.

(c) If any licensed professional counselor, licensed associate counselor, licensed marriage and family therapist, or licensed associate marriage and family therapist duly licensed under this chapter by virtue of additional training and experience is qualified to practice in a specialty other than that for which he or she was deemed competent at the time of initial licensing and wishes to offer service under the provisions of this chapter, he or she is required to submit additional credentials and he or she is to be given the opportunity to demonstrate his or her knowledge and application thereof in areas deemed relevant to his or her specialty.

History. Acts 1979, No. 593, § 12; formerly codified as § 17-27-304. Former A.S.A. 1947, § 71-5212; Acts 1997, No. § 17-27-307 has been renumbered as 244, § 4. § 17-27-310.

A.C.R.C. Notes. This section was for-

17-27-308. Reciprocity.

(a) At its discretion, the Arkansas Board of Examiners in Counseling may waive formal examination requirements of a candidate who is licensed or certified to practice counseling or marriage and family therapy by a similar board in another state if, in the opinion of the board, the standards and qualifications required for the practice of counseling in the candidate's licensing state are at least equal to those required by this chapter.

(b) The board has the power to waive formal examination requirements only and does not have the power to waive any required period of supervision as provided in this chapter.

History. Acts 1979, No. 593, § 13; formerly codified as § 17-27-305. Former A.S.A. 1947, § 71-5213; Acts 1997, No. 244, § 4. § 17-27-308 has been renumbered as § 17-27-311.

A.C.R.C. Notes. This section was for-

17-27-309. Suspension or revocation.

(a)(1) The Arkansas Board of Examiners in Counseling shall have the power to suspend or revoke the license of any person found guilty of violating any ethical or professional standard.

(2) The sanction of suspension upon order of the board shall not be for a period greater than six (6) months. Any licensee thereby sanctioned shall not be allowed to practice counseling in this state until the termination of the suspension period and subsequent timely review by the board.

(b) The board shall revoke the license of any person who is found guilty of or pleads guilty or nolo contendere to any offense listed in § 17-27-313(f) unless the person requests and the board grants a waiver pursuant to § 17-27-313(h).

History. Acts 1979, No. 593, § 17; A.S.A. 1947, § 71-5217; Acts 1997, No. 244, § 4; 1997, No. 1317, § 4. **A.C.R.C. Notes.** This section was formerly codified as § 17-27-306.

17-27-310. Fees — Disposition of funds.

(a) All fees from applicants seeking licensure under this chapter and all license or renewal fees received shall be paid to the Arkansas Board of Examiners in Counseling.

(b) No part of any fee shall be returnable under any condition other than failure of the board to hold examinations at the time originally announced, whereupon the entire fee may be returned at the option of the applicant.

(c)(1) All fees collected or gifts or grants shall be deposited into the State Treasury to the credit of the board via electronic transfer from a financial institution in this state chosen by the board.

(2) Expenses shall be paid under written direction of the Chair of the Arkansas Board of Examiners in Counseling and the secretary of the board in accordance with usual state procedures.

History. Acts 1979, No. 593, § 7; A.S.A. 1947, § 71-5207; Acts 1997, No. 244, § 4; 2003, No. 1206, § 4.

A.C.R.C. Notes. This section was formerly codified as § 17-27-307.

17-27-311. Privileged communication.

(a) For the purposes of this chapter, the confidential relations and communications between a licensed counselor and a client, a licensed associate counselor and a client, a licensed marriage and family therapist and a client, or between a licensed associate marriage and family therapist and a client are placed upon the same basis as those between an attorney and a client.

(b) Nothing in this chapter shall be construed to require that any privileged communication be disclosed.

History. Acts 1979, No. 593, § 14; A.S.A. 1947, § 71-5214; Acts 1997, No. 244, § 4.

A.C.R.C. Notes. This section was formerly codified as § 17-27-308.

17-27-312. Application of laws pertaining to licensed professional counselors.

All laws of this state that pertain to licensed professional counselors shall likewise pertain to and include licensed marriage and family therapists.

History. Acts 1997, No. 244, § 4.

17-27-313. Criminal background checks.

(a) The Arkansas Board of Examiners in Counseling may require each applicant for license renewal and each first-time applicant for a license issued by the board to apply to the Identification Bureau of the Department of Arkansas State Police for a state and national criminal background check, to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(b) The check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the board and shall be responsible for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the board all releasable information obtained concerning the applicant.

(e) No person shall be eligible to receive or hold a license issued by the board if that person has pleaded guilty or nolo contendere to or been found guilty of any of the following offenses by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court:

- (1) Capital murder as prohibited in § 5-10-101;
- (2) Murder in the first degree and second degree as prohibited in §§ 5-10-102 and 5-10-103;
- (3) Manslaughter as prohibited in § 5-10-104;
- (4) Negligent homicide as prohibited in § 5-10-105;
- (5) Kidnapping as prohibited in § 5-11-102;
- (6) False imprisonment in the first degree as prohibited in § 5-11-103;
- (7) Permanent detention or restraint as prohibited in § 5-11-106;
- (8) Robbery as prohibited in § 5-12-102;
- (9) Aggravated robbery as prohibited in § 5-12-103;
- (10) Battery in the first degree as prohibited in § 5-13-201;
- (11) Aggravated assault as prohibited in § 5-13-204;
- (12) Introduction of controlled substance into body of another person as prohibited in § 5-13-210;
- (13) Terroristic threatening in the first degree as prohibited in § 5-13-301;
- (14) Rape as prohibited in § 5-14-103;
- (15) Sexual indecency with a child as prohibited in § 5-14-110;
- (16) Sexual assault in the first degree, second degree, third degree, and fourth degree as prohibited in §§ 5-14-124 — 5-14-127;
- (17) Incest as prohibited in § 5-26-202;
- (18) Offenses against the family as prohibited in §§ 5-26-303 — 5-26-306;
- (19) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201;
- (20) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-203;
- (21) Permitting abuse of a minor as prohibited in § 5-27-221(a);
- (22) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child as prohibited in §§ 5-27-303 — 5-27-305, 5-27-402, and 5-27-403;
- (23) Felony adult abuse as prohibited in § 5-28-103;
- (24) Theft of property as prohibited in § 5-36-103;
- (25) Theft by receiving as prohibited in § 5-36-106;
- (26) Arson as prohibited in § 5-38-301;
- (27) Burglary as prohibited in § 5-39-201;
- (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-608, as prohibited in § 5-64-401;

(29) Promotion of prostitution in the first degree as prohibited in § 5-70-104;

(30) Stalking as prohibited in § 5-71-229;

(31) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection;

(32) Computer child pornography as prohibited in § 5-27-603; and

(33) Computer exploitation of a child in the first degree as prohibited in § 5-27-605.

(f)(1) The board may issue a six-month nonrenewable letter of provisional eligibility for licensure to a first-time applicant pending the results of the criminal background check.

(2) Upon receipt of information from the Identification Bureau of the Department of Arkansas State Police that the person holding such a letter of provisional licensure has pleaded guilty or nolo contendere to or been found guilty of any offense listed in subsection (e) of this section, the board shall immediately revoke the provisional license.

(g)(1) The provisions of subsections (e) and (f) of this section may be waived by the board upon the request of:

(A) An affected applicant for licensure; or

(B) The person holding a license subject to revocation.

(2) Circumstances for which a waiver may be granted shall include, but not be limited to, the following:

(A) The age at which the crime was committed;

(B) The circumstances surrounding the crime;

(C) The length of time since the crime;

(D) Subsequent work history;

(E) Employment references;

(F) Character references; and

(G) Other evidence demonstrating that the applicant does not pose a threat to the health or safety of children.

(h)(1) Any information received by the board from the Identification Bureau of the Department of Arkansas State Police pursuant to this section shall not be available for examination except by:

(A) The affected applicant for licensure, or his or her authorized representative; or

(B) The person whose license is subject to revocation, or his or her authorized representative.

(2) No record, file, or document shall be removed from the custody of the Department of Arkansas State Police.

(i) Any information made available to the affected applicant for licensure or the person whose license is subject to revocation shall be information pertaining to that person only.

(j) Rights of privilege and confidentiality established under this section shall not extend to any document created for purposes other than this background check.

(k) The board shall adopt the necessary rules and regulations to fully implement the provisions of this section.

History. Acts 1997, No. 1317, § 5; 2003, No. 1087, § 14; 2003, No. 1388, § 1; 2005, No. 2277, § 1.

A.C.R.C. Notes. This section was formerly codified as § 17-27-309 [As enacted by Acts 1997, No. 1317]. The section was renumbered pursuant to § 1-2-303(d)(1)(G).

Acts 1997, No. 1317, § 5, provided in part: "(m)(1) By October 1, 2000, all persons licensed by the board prior to October 1, 1997, shall be required to apply for a criminal history check in the same manner as an applicant for licensure under this section. (2) The board shall develop and adopt a regulation that prescribes how criminal history checks for persons licensed prior to October 1, 1997, will be

phased in during the period prior to October 1, 2000."

Amendments. The 2005 amendment, in (a), substituted "The Arkansas ... renewal and each" for "On and after October 1, 1997," deleted "shall be required" preceding "to apply" and inserted "Identification Bureau and the"; deleted "to the Department of Arkansas State Police" following "responsible" in (c); in (d), inserted "to the board" and "releasable" and deleted "in the commission of any offense listed in subsection (f) of this section to the board" at the end; deleted former (e) and redesignated the remaining subsection accordingly; and, in present (g)(1), substituted "subsections (e) and (f)" for "subsection (f)."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Criminal Law, Computer Crimes, 26 U. Ark. Little Rock L. Rev. 361.

Survey of Legislation, 2003 Arkansas General Assembly, Professions, Occupations, Businesses, Background Checks, 26 U. Ark. Little Rock L. Rev. 456.

SUBCHAPTER 4 — LICENSING ALCOHOLISM AND DRUG ABUSE COUNSELORS

SECTION.

- 17-27-401. Definitions.
- 17-27-402. Purpose.
- 17-27-403. Exemptions.
- 17-27-404. Establishment of licensure board.
- 17-27-405. Compensation for board members.
- 17-27-406. Powers and duties of board.
- 17-27-407. Board to enjoin violations.
- 17-27-408. Licensed alcoholism and drug abuse counselor — License requirements.
- 17-27-409. Licensed associate alcoholism and drug abuse counselor — License requirements.

SECTION.

- 17-27-410. Certified alcoholism and drug abuse technician — Certification requirements.
- 17-27-411. Registered clinical supervisors.
- 17-27-412. [Repealed.]
- 17-27-413. License and certificate renewal — Fee — Waiver.
- 17-27-414. Grievance procedure — Denial, revocation, or suspension of license or certificate — Appeals.
- 17-27-415. Funding of board.
- 17-27-416. Confidentiality of information — Exception.

17-27-401. Definitions.

As used in this subchapter:

(1) "Board" means the State Board of Examiners of Alcoholism and Drug Abuse Counselors created by this subchapter;

(2) "Licensed alcoholism and drug abuse counselor" means a person who renders for compensation alcoholism and drug abuse counseling or alcoholism and drug abuse counseling-related services to an individual, group, organization, corporation, institution, or to the general public, and who holds a license issued by the State Board of Examiners of

Alcoholism and Drug Abuse Counselors or by another health or behavioral sciences board to engage in the practice of alcoholism and drug abuse counseling;

(3) “Practice of alcoholism and drug abuse counseling” means the professional activity of helping individuals, groups, organizations, corporations, institutions, or the general public to develop an understanding of alcoholism and drug dependency problems and to define goals and plan action reflecting the individual’s or group’s interests, abilities, and needs as affected by claimed alcoholism and drug dependency problems. It includes the professional application of values, principles, and techniques to one (1) or more of the following ends:

- (A) Counseling with individuals, families, and groups;
- (B) Helping people obtain tangible services;
- (C) Assisting communities or groups;
- (D) Providing or improving social and health services; and
- (E) Engaging in alcoholism and drug abuse education and prevention through the appropriate administration of alcoholism and drug abuse counseling services;

(4) “Registered clinical supervisor” means a person registered by the State Board of Examiners of Alcoholism and Drug Abuse Counselors to provide clinical supervision of applicants for certification or licensure; and

(5) “Supervised work experience” means paid or voluntary work experience as an alcohol and drug abuse counselor who provides alcohol and drug abuse counseling services under the supervision of a credentialed alcohol and drug abuse counselor to persons with alcoholism or other drug dependency, or both.

History. Acts 1999, No. 1588, § 1; 2009, No. 443, § 1.

Amendments. The 2009 amendment deleted (2), which defined “certified clinical supervisor,” inserted (4), redesignated the remaining subdivisions accordingly, and made related changes.

17-27-402. Purpose.

(a) It is the purpose and policy of the State of Arkansas to protect the public from being misled by incompetent and unauthorized persons and from unprofessional conduct on the part of qualified alcoholism and drug abuse counselors by providing regulatory authority over persons who hold themselves out to the public as licensed alcoholism and drug abuse counselors under this subchapter.

(b) The purpose of this subchapter is to allow the State Board of Examiners of Alcoholism and Drug Abuse Counselors to establish appropriate licensure and certification requirements and define the practice of alcoholism and drug abuse counseling and to promote high standards of professional performance for those engaged in the practice of alcoholism and drug abuse counseling by setting standards of qualification, training, and experience for those who seek to engage in the practice of alcoholism and drug abuse counseling under this subchapter.

History. Acts 1999, No. 1588, § 2.

17-27-403. Exemptions.

(a)(1) Nothing contained in this subchapter shall be applicable to employees of the Department of Education or local boards of education who meet the certification as established or which may be established by the State Board of Education.

(2) Nothing in this subchapter shall be construed to limit or restrict the regulation of the title, setting of standards, qualifications, training, or experience of those who seek to engage in the practice of alcoholism and drug abuse counseling and who have been or will be certified by the board for the position for which they have been employed.

(b) Nothing contained in this subchapter shall require persons employed by the State of Arkansas, the director or administrative head of a social service agency or division of a city or county, or applicants for such employment to be licensed.

(c) Nothing contained in this subchapter shall be construed to limit the activities and services of a student or intern seeking to fulfill the educational requirements in order to qualify for a license under this subchapter or acts of other recognized health or behavioral sciences professions.

(d) Nothing contained in this subchapter shall prohibit individuals not licensed under the provisions of this subchapter who work in self-help groups or programs or not-for-profit organizations from providing services in those groups, programs, or organizations or agencies.

(e) Nothing contained in this subchapter shall be construed to prevent qualified members of other recognized health or behavioral science professions from performing work within the standards and ethics of their respective professions.

(f) Nothing in this subchapter shall be construed to prevent persons licensed under other health or behavioral science boards from the practice of alcoholism and drug abuse counseling so long as those persons maintain current licensure in their respective fields.

(g) Nothing contained in this subchapter shall be construed to prevent members of the clergy or Christian Science practitioners from performing work within the standards and any code of ethics of their respective professions as long as they do not hold themselves out to the public as being licensed alcoholism and drug abuse counselors.

(h) Nothing contained in this subchapter shall be construed to restrict the licensure of programs under §§ 20-64-901 — 20-64-909.

History. Acts 1999, No. 1588, § 3.

17-27-404. Establishment of licensure board.

(a)(1) There is hereby created the State Board of Examiners of Alcoholism and Drug Abuse Counselors to be composed of thirteen (13) members who shall be appointed by the Governor.

(2) Two (2) of the initial members shall be alcoholism and drug abuse counselors certified by the Arkansas Substance Abuse Certification Board who are licensed under the provisions of this subchapter and who have rendered service, education, or research in alcoholism and drug abuse counseling for at least five (5) years. Their successors shall be alcoholism and drug abuse counselors licensed by the State Board of Examiners of Alcoholism and Drug Abuse Counselors who have rendered service, education, or research in alcoholism and drug abuse counseling for at least two (2) years.

(3) Four (4) of the initial members shall be alcoholism and drug abuse counselors certified by the Arkansas Substance Abuse Certification Board who are licensed under the provisions of this subchapter and who have rendered service, education, or research in alcoholism and drug abuse counseling for at least two (2) years. Their successors shall be alcoholism and drug abuse counselors licensed by the State Board of Examiners of Alcoholism and Drug Abuse Counselors who have rendered service, education, or research in alcoholism and drug abuse counseling for at least five (5) years.

(4) Four (4) of the initial members shall be alcoholism and drug abuse counselors certified by the Arkansas Substance Abuse Certification Board who are licensed under the provisions of this subchapter and who engage in the independent practice of alcoholism and drug abuse counseling. Their successors shall be alcoholism and drug abuse counselors licensed by the State Board of Examiners of Alcoholism and Drug Abuse Counselors who have rendered service, education, or research in alcoholism and drug abuse counseling for at least five (5) years.

(5) One (1) member shall be licensed by an Arkansas health or behavioral sciences board and hold a specialty in alcohol and drug abuse counseling or addiction and a current license from his or her licensing boards.

(6) One (1) member shall be a licensed professional counselor with a specialty in alcohol and drug abuse counseling or addiction.

(7) One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated.

(b) The initial members of the State Board of Examiners of Alcoholism and Drug Abuse Counselors shall be appointed so that three (3) members serve a one-year term, three (3) members serve a two-year term, three (3) members serve a three-year term, and four (4) members serve a four-year term. Successor members shall serve four-year terms except that persons appointed to fill vacancies resulting in an unexpired term shall serve for the remainder of that unexpired term.

(c) Upon the recommendation of the State Board of Examiners of Alcoholism and Drug Abuse Counselors made after notice and hearing, the Governor may remove any member of the State Board of Examiners of Alcoholism and Drug Abuse Counselors for incompetence, neglect of duty, or malfeasance in office.

(d) Any vacancy on the State Board of Examiners of Alcoholism and Drug Abuse Counselors shall be filled by the Governor.

(e) The Governor shall call the first board meeting and designate a member to preside at that meeting. The State Board of Examiners of Alcoholism and Drug Abuse Counselors shall elect annually from its membership a chair, a vice chair, and a secretary. The State Board of Examiners of Alcoholism and Drug Abuse Counselors shall meet as frequently as it deems necessary, at such times and places as the State Board of Examiners of Alcoholism and Drug Abuse Counselors designates. Additional meetings may be held upon the call of the chair or upon the written request of five (5) members of the State Board of Examiners of Alcoholism and Drug Abuse Counselors.

(f) Seven (7) members of the State Board of Examiners of Alcoholism and Drug Abuse Counselors shall constitute a quorum.

History. Acts 1999, No. 1588, § 4.

17-27-405. Compensation for board members.

The members of the State Board of Examiners of Alcoholism and Drug Abuse Counselors may receive a stipend of sixty dollars (\$60.00) per day for each day of attendance at a board meeting plus expense reimbursement pursuant to § 25-16-901 et seq. The stipend and expense reimbursement shall not be made if available funds are insufficient for this purpose.

History. Acts 1999, No. 1588, § 5;
2001, No. 1650, § 8.

17-27-406. Powers and duties of board.

(a) The State Board of Examiners of Alcoholism and Drug Abuse Counselors shall administer and enforce the provisions of this subchapter and shall adopt rules and regulations consistent with its provisions, including a code of ethical practice.

(b) The board shall review and act upon applications for licensure and certification at least four (4) times a year and shall regulate the renewal of licenses or certifications.

(c) The board may conduct hearings on charges calling for the denial, revocation, or suspension of a license or certification, shall adopt rules for the conduct of the hearings, and shall cause the prosecution of all persons who violate any provisions of this subchapter or any rule or regulation promulgated pursuant to its provisions.

(d) The board may sue and be sued in its own name.

(e) The board may employ any persons it deems necessary to carry on the work of the board and shall define their duties and fix their compensation within the limits prescribed by law.

(f) The board shall maintain a register of all individuals licensed or certified under the provisions of this subchapter. The register shall be a public record.

(g) The board shall keep a complete record of all of its proceedings.

(h) The board shall set by regulation a fee schedule for examination. The fees shall be set at a level sufficient to cover the cost of preparations, administration, and grading of the examination.

History. Acts 1999, No. 1588, § 6.

17-27-407. Board to enjoin violations.

When it appears to the State Board of Examiners of Alcoholism and Drug Abuse Counselors that a person is violating any provisions of this subchapter, the board or any member thereof shall not be required to furnish bond for any cost or filing fees in connection with the proceeding.

History. Acts 1999, No. 1588, § 7.

17-27-408. Licensed alcoholism and drug abuse counselor — License requirements.

(a) The State Board of Examiners of Alcoholism and Drug Abuse Counselors shall issue the license as a licensed alcoholism and drug abuse counselor to an applicant who meets the following requirements:

- (1) Is at least twenty-one (21) years of age;
- (2)(A) Has successfully completed a minimum of three (3) years or six thousand (6,000) hours of supervised experience.

(B) Supervised experience shall be approved and documented by a registered clinical supervisor in good standing with the board;

- (3)(A) Has successfully completed a minimum of two hundred seventy (270) clock hours of approved education.

(B) Approved education shall be directly related to alcoholism or drug abuse counseling subjects, theory, practice, or research;

- (4) Has submitted an application on a form provided by the board;

(5) Has certified under penalty of perjury as evidenced by a notarized signature on the application for licensure that all education and experience requirements have been met;

- (6) Has submitted three (3) letters of reference;

- (7) Has paid to the board an examination fee fixed by the board;

(8) Has passed a national qualifying written examination prescribed by the board, sufficient to ensure professional competence in keeping with the highest standards of the alcoholism and drug abuse counseling profession;

(9) Has signed a written agreement to abide by the code of ethics adopted by the board; and

(10) Holds a master's degree in the health or behavioral sciences field or other appropriate field from an accredited college or university.

(b) The license shall be displayed in the licensee's principal place of practice and shall entitle the licensee to hold himself or herself forth to the public as providing services as authorized by this subchapter.

History. Acts 1999, No. 1588, § 8; 2009, No. 443, § 2.

Amendments. The 2009 amendment, in (a), subdivided (a)(2) and (a)(3), substi-

tuted “registered” for “certified” in (a)(2)(B), deleted “and oral examination” following “written examination” in (a)(5), and made minor stylistic changes.

17-27-409. Licensed associate alcoholism and drug abuse counselor — License requirements.

(a) The State Board of Examiners of Alcoholism and Drug Abuse Counselors shall issue a license as a licensed associate alcoholism and drug abuse counselor to an applicant who meets the following requirements:

(1) Is at least twenty-one (21) years of age;

(2)(A) Has successfully completed a minimum of three (3) years or six thousand (6,000) hours of supervised experience.

(B) Supervised experience shall be approved and documented by a registered clinical supervisor in good standing with the board;

(3)(A) Has successfully completed a minimum of two hundred seventy (270) clock hours of approved education.

(B) Approved education shall be directly related to alcoholism or drug abuse counseling subjects, theory, practice, or research;

(4) Has submitted an application on a form provided by the board;

(5) Has certified under penalty of perjury as evidenced by a notarized signature on the application for licensure that all education and experience requirements have been met;

(6) Has submitted three (3) letters of reference;

(7) Has paid to the board an examination fee fixed by the board;

(8) Has passed a national qualifying written examination prescribed by the board, sufficient to ensure professional competence in keeping with the highest standards of the alcoholism and drug abuse counseling profession;

(9) Has signed a written agreement to abide by the code of ethics adopted by the board;

(10) Holds a baccalaureate degree in the health or behavioral sciences field or other appropriate field from an accredited college or university; and

(11)(A) Has successfully completed a minimum of three (3) years or six thousand (6,000) hours of supervised direct counseling experience in the alcoholism or drug abuse counseling field, either paid or voluntary.

(B) Supervised experience shall be approved and documented by a registered clinical supervisor in good standing with the board.

(b) The certification shall be displayed in the associate’s principal place of practice and shall entitle the individual to hold himself or herself forth to the public as providing services as authorized by this subchapter.

(c) Associates licensed by the board may engage in the practice of alcoholism and drug abuse counseling after successfully completing a schedule of supervision prescribed by the board and performed under

the direct supervision of a registered clinical supervisor in good standing with the board.

History. Acts 1999, No. 1588, § 9; 2009, No. 443, § 2.

Amendments. The 2009 amendment, in (a), substituted “a license as a licensed associate alcoholism and drug abuse counselor” for “the certification as a certified alcoholism and drug abuse associate” in the introductory language, subdivided

(a)(2) and substituted “registered” for “certified” in (a)(2)(B), deleted “and oral examination” following “written examination” in (a)(8), deleted (a)(11), (a)(13), and (a)(14) and redesignated the remaining subdivisions accordingly, and rewrote (a)(11); rewrote (c); and made related and minor stylistic changes.

17-27-410. Certified alcoholism and drug abuse technician — Certification requirements.

(a) The State Board of Examiners of Alcoholism and Drug Abuse Counselors shall issue the certification as a certified alcoholism and drug abuse technician to an applicant who meets the following requirements:

- (1) Is at least twenty-one (21) years of age;
- (2)(A) Has successfully completed a minimum of three (3) years or six thousand (6,000) hours of supervised experience.

(B) Supervised experience shall be approved and documented by a registered clinical supervisor in good standing with the board;

- (3)(A) Has successfully completed a minimum of two hundred seventy (270) clock hours of approved education.

(B) Approved education shall be directly related to alcoholism or drug abuse counseling subjects, theory, practice, or research;

- (4) Has submitted an application on a form provided by the board;

(5) Has certified under penalty of perjury as evidenced by a notarized signature on the application for licensure that all education and experience requirements have been met;

- (6) Has submitted three (3) letters of reference;

- (7) Has paid to the board an examination fee fixed by the board;

(8) Has passed a national qualifying written examination prescribed by the board, sufficient to ensure professional competence in keeping with the highest standards of the alcoholism and drug abuse counseling profession;

(9) Has signed a written agreement to abide by the code of ethics adopted by the board; and

- (10) Holds a high school diploma or equivalent.

(b) The certification shall be displayed in the technician’s principal place of practice and shall entitle the individual to hold himself or herself forth to the public as providing services as authorized by this subchapter.

(c) Technicians certified by the board may engage in the practice of alcoholism and drug abuse counseling only while under the direct supervision of a licensed alcoholism and drug abuse counselor who is registered as a registered clinical supervisor by the board.

(d) A technician shall not receive a license as a licensed alcoholism and drug abuse counselor or a license as an associate alcoholism and

drug abuse counselor unless the provisions of §§ 17-27-408 and 17-27-409 have been met.

History. Acts 1999, No. 1588, § 10; 2009, No. 443, § 2.

Amendments. The 2009 amendment, in (a), subdivided (a)(2) and (a)(3), substituted “registered” for “certified” in (a)(2)(B), and deleted “and oral examination” following “written examination” in (a)(8); substituted “technician’s” for “associate’s” in (b); substituted “who is regis-

tered as a registered clinical supervisor by the board” for “or other health professional licensed under other behavioral or health boards and practicing alcohol and drug abuse counseling” in (c); substituted “license as an associate alcoholism and drug abuse counselor” for “certificate as a certified alcohol and drug abuse associate” in (d); and made minor stylistic changes.

17-27-411. Registered clinical supervisors.

The State Board of Examiners of Alcoholism and Drug Abuse Counselors may register persons who meet the qualifications and standards established by the board for registered clinical supervisors.

History. Acts 1999, No. 1588, § 11; 2009, No. 443, § 2.

Amendments. The 2009 amendment

substituted “register” for “issue certificates to” and “registered” for “certified.”

17-27-412. [Repealed.]

Publisher’s Notes. This section, concerning a grandfather clause, was repealed by Acts 2009, No. 443, § 3. The

section was derived from Acts 1999, No. 1588, § 12; 2001, No. 1708, § 1.

17-27-413. License and certificate renewal — Fee — Waiver.

(a) Each licensed alcoholism and drug abuse counselor, licensed associate alcoholism and drug abuse counselor, and certified alcoholism and drug abuse technician shall:

(1) Renew his or her license or certificate every two (2) years; and

(2) Pay the State Board of Examiners of Alcoholism and Drug Abuse Counselors a renewal fee fixed by the board.

(b)(1) Renewal fees shall be waived for any licensee or person certified actually serving in the armed forces of the United States.

(2) A waiver under subdivision (b)(1) of this section shall be effective for six (6) months following honorable discharge, separation, or release from the armed forces, after which period a license or certificate shall be considered lapsed.

(c) The board, at its discretion, may require continuing education as a condition of license or certificate renewal.

History. Acts 1999, No. 1588, § 13; 2009, No. 443, § 4.

Amendments. The 2009 amendment subdivided (a) and substituted “licensed associate” for “certified” and “counselor”

for “associate” in the introductory language; subdivided (b) and inserted “under subdivision (b)(1) of this section” in (b)(2); and made related and minor stylistic changes.

17-27-414. Grievance procedure — Denial, revocation, or suspension of license or certificate — Appeals.

(a) The State Board of Examiners of Alcoholism and Drug Abuse Counselors may hear the grievances of any person whose application for a license, registration, or certificate has been denied.

(b) The board may deny, revoke, or suspend any license, registration, or certificate upon proof that the person has willfully or repeatedly violated any of the provisions of this subchapter or any rule or regulation promulgated by the board or upon proof that a person has practiced outside the scope of practice for which he or she is licensed or certified under this subchapter.

(c) The board shall not suspend, revoke, or refuse to renew a license or certificate, except after a hearing held before the board, upon notice to the person charged.

(d) The notice shall:

(1) Be in writing;

(2) State the nature of the charges and the time and place of the hearing; and

(3) Be served on the person charged by certified mail not less than thirty (30) days before the date of the hearing.

(e) The person charged:

(1) May appear in person or by counsel;

(2) May testify;

(3) May produce evidence and witnesses on his or her own behalf;

(4) May cross-examine witnesses; and

(5) Is entitled on application to the board to the issuance of subpoenas to compel the attendance of witnesses and the production of documentary evidence.

(f)(1) The board or its authorized representative on his or her behalf shall have the authority to issue subpoenas to compel the attendance of witnesses and the production of documents and may administer oaths.

(2) The board may invoke the aid of the circuit court for the county in which the hearing is held to enforce compliance with its subpoenas.

(g) A stenographic or mechanical record of the hearing shall be taken, and a transcript shall be preserved by the board.

(h) At all hearings before the board, the Attorney General of the State of Arkansas or one (1) of his or her assistants designated by him or her shall appear and represent the board.

(i) The decision of the board shall be by a majority vote of the board.

(j) A copy of the board's order shall be sent by certified mail to the last known address of the person charged.

(k) The board may grant a rehearing when new and material evidence is offered for its consideration.

(l)(1) Any person aggrieved by a final order of the board, within thirty (30) days of the entry of the order, may appeal to the circuit court of the county in which he or she resides.

(2) The appeal shall be determined by the court upon the certified record, and new or additional evidence shall not be heard or considered by the court.

History. Acts 1999, No. 1588, § 14; inserted “registration” in (a) and (b); sub-
2009, No. 443, § 4. divided (d), (e), (f), and (l); and made

Amendments. The 2009 amendment related and minor stylistic changes.

17-27-415. Funding of board.

All moneys received by the State Board of Examiners of Alcoholism and Drug Abuse Counselors under this subchapter shall be deposited into one (1) or more financial institutions in this state. The moneys shall be used for the operation of the board.

History. Acts 1999, No. 1588, § 15.

17-27-416. Confidentiality of information — Exception.

No individual licensed or certified under the provisions of this subchapter may disclose any information he or she may have acquired from persons consulting him or her in his or her capacity as a person regulated under this subchapter, except:

(1) With the written consent of the person or, in the case of death or disability, of his or her authorized representative, or the beneficiary of an insurance policy on his or her life, health, or physical condition;

(2) A communication that reveals the contemplation of a crime or a harmful act;

(3) When the communication indicates that the person was the victim of a crime, the individual shall be required to testify fully when properly ordered by a court of competent jurisdiction in any examination, trial, or other proceeding in which the commission of a crime is the subject of inquiry;

(4) Communications made in the course of an examination ordered by a court of competent jurisdiction when the client has been informed before the examination that any communications made during the examination would not be privileged;

(5) When the individual is a defendant in either a civil or criminal action; or

(6) If the individual has reasonable ground to suspect that a child has been abused or neglected, he or she shall report such information as required by law.

History. Acts 1999, No. 1588, § 16.

CHAPTER 28

ELECTRICIANS

SUBCHAPTER.

1. GENERAL PROVISIONS.

SUBCHAPTER

- 2. BOARD OF ELECTRICAL EXAMINERS OF THE STATE OF ARKANSAS.
- 3. LICENSING.

Publisher's Notes. Prior to the 1995 replacement of this volume, this chapter was codified as § 17-25-101 et seq.

Effective Dates. Acts 1979, No. 870, § 15: approved Apr. 11, 1979. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the lack of state electrical licensing provisions has caused considerable hardships on the

building construction industry within the state, and the provisions of this act will provide adequate remedy for this situation. Now, therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage."

RESEARCH REFERENCES

Am. Jur. 58 Am. Jur. 2d, Occup., §§ 5, 65-68, 132.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 17-28-101. Definitions.
- 17-28-102. Construction and exemptions.

SECTION.

- 17-28-103. Disposition of funds.

Cross References. Contractors licensing law, § 17-25-101 et seq.

Effective Dates. Acts 1983, No. 866, § 6: Mar. 28, 1983. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the lack of a state industrial maintenance electrician licensing procedure has caused considerable hardships on the people of this state, and the provision of this act will provide an adequate remedy for the situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of public peace, safety and health shall be in full force from and after its passage and approval."

Acts 1999, No. 493, § 5: Mar. 9, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly, that Act 1289 of 1997 resulted in overlapping jurisdiction between two state licensing boards causing an undue hardship on certain business operations. Therefore, an emergency

is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 894, § 6: Mar. 29, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that Act 1289 of 1997 is making it difficult or impossible for industry to hire new employees to perform electrical work due to a severe shortage in licensed journeyman and master electricians in Arkansas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and

safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 577, § 8: July 1, 2001. Emergency clause provided: "It is hereby found and determined by the Eighty-third

General Assembly that this act must go into effect on the date the biennial appropriation for the Department of Labor goes into effect, which is July 1, 2001, and that the delay in the effective date of this act could work irreparable harm upon the proper administration and provisions of essential government programs. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2001."

17-28-101. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Air conditioning electrician" means an individual who is limited to a license classification possessing the necessary qualifications, training, and technical knowledge for the installation, maintenance, and extension of electrical conductors and equipment solely for the purpose of supplying heating and air conditioning and refrigeration units;

(2) "Electrical apprentice" means a person whose principal occupation is the learning of and assisting in the installation of electrical work under the direct supervision of a licensed journeyman electrician or master electrician;

(3) "Electrical contractor" means a person, member, or employee of a firm, partnership, or corporation engaged in the business of installing, erecting, repairing, or contracting to install, erect, or repair electrical wires or conductors to be used for the transmission of electrical light, heat, power, or signaling purposes, or to install or repair moulding, ducts, raceways, or conduits, for the reception or protection of such wires or conduits, or any electrical machinery, apparatus, or systems to be used for electrical light, heat, power, or signaling purposes;

(4) "Electrical work" means:

(A) Installations of electric conductors and equipment within or on public and private buildings or other structures, including recreational vehicles and floating buildings, and other premises such as yards, carnivals, parking and other lots, and industrial substations;

(B) Installations of conductors that connect to the supply of electricity; and

(C) Installations of other outside conductors on the premises;

(5) "Industrial maintenance electrician" means an individual who possesses the necessary qualifications, training, and technical knowledge to maintain and extend electrical conductors and equipment for electrical power and control systems on or within industrial, manufacturing, or similar type facilities. He or she shall be capable of doing such work in accordance with standard rules governing that work;

(6) “Journeyman electrician” means an individual who possesses the necessary qualifications, training, and technical knowledge to install, maintain, and extend electrical conductors and equipment. He or she shall be capable of doing such work in accordance with plans and specifications furnished him or her in accordance with standard rules governing the work;

(7) “Master electrician” means an individual who possesses the necessary qualifications, training, and technical knowledge to plan, layout, and supervise the installation, maintenance, and extension of electrical conductors and equipment;

(8) “Primary residence” means an unattached single-family dwelling used as the person’s primary place of residence;

(9) “Residential journeyman electrician” means the classification by which the licenses and electrical work of journeyman electricians may be limited to the installation, alteration, repair, maintenance, or renovation of electrical facilities for one- and two-family dwellings;

(10) “Residential master electrician” means the classification by which the licenses and electrical work of master electricians may be limited to planning and supervising the installation, maintenance, and extension of electrical facilities for one- and two-family dwellings; and

(11) “Specialist sign electrician” means an individual who is limited to a license classification possessing the necessary qualifications, training, and technical knowledge for:

(A) Installing, maintaining, and repairing electrically illuminated or electrically operated signs and gaseous tubing for illumination; and

(B) Making all connections to an approved outlet of sufficient capacity within twenty-five feet (25’) of the sign to be connected.

History. Acts 1979, No. 870, § 1; 1983, No. 866, § 1; A.S.A. 1947, § 71-5301; Acts 1997, No. 1289, § 1; 2009, No. 1188, § 1. deleted “and regulations” following “rules” in (5); added (11); and made related and minor stylistic changes.

Amendments. The 2009 amendment

17-28-102. Construction and exemptions.

(a) The provisions of this chapter shall not apply to:

(1) The construction, installation, maintenance, repair, or renovation by any public utility, as that term is defined by § 23-1-101(9)(A), by any rural electric association or cooperative, or by any municipally owned utility, of any transmission or distribution lines or facilities incidental to their business and covered under other nationally recognized safety standards or to any other such activity when performed by any duly authorized employee, agent, contractor, or subcontractor of any such public utility, association, cooperative, or municipally owned utility;

(2) The construction, installation, maintenance, repair, or renovation by any industry, as that term is defined in subsection (f) of this section, of any electric conductors or equipment or facilities incidental to their business and covered under other nationally recognized safety stan-

dards or to any other such activity when performed by any duly authorized employee of any such industry;

(3) The construction, installation, maintenance, repair, or renovation of telephone equipment, computer systems, or satellite systems by a person, firm, or corporation engaged in the telecommunications or information systems industry when such activities involve low-voltage work exclusively for communication of data, voice, or other signaling purposes, including fire alarm systems, security systems, and environmental control systems that are not an integral part of a telecommunications system;

(4) The construction, installation, maintenance, repair, or renovation of any nonresidential farm building or structure;

(5) The construction and manufacture of manufactured homes covered by the Manufactured Home Construction and Safety Standards Act, 42 U.S.C. § 4501 et seq.; and

(6) Any industry, as that term is defined in subsection (f) of this section, or group of industries under common ownership or control, with assets in this state of one billion dollars (\$1,000,000,000) or more, provided that the exemption provided in this subdivision (a)(6) shall only apply to projects commenced between July 1, 2001, and December 31, 2003.

(b) Nothing in this chapter shall be construed to require an individual to hold a license before doing electrical work on his or her primary residence except as otherwise required by state law, regulations, or local ordinances. The exemption from compliance with the licensing standards shall not be referred to in any way and shall not be any evidence of the lack of negligence or the exercise of due care by a party at a trial of any civil action to recover damages by any party.

(c)(1) Any holder of a state-issued heating, ventilation, air conditioning, and refrigeration, or HVACR, license may run line voltage power wiring in compliance with the state electric code from a disconnect box to an outdoor HVACR unit within a distance not to exceed ten feet (10') from any point of the HVACR equipment without obtaining an electrician's license as required by this chapter.

(2) Any person licensed by the Commission on Water Well Construction pursuant to the provisions of the Arkansas Water Well Construction Act, § 17-50-101 et seq., and subject to that commission's regulations and to the National Electric Code may run power and control wiring from an existing disconnect box to water well equipment without obtaining an electrician's license as required by this chapter. Nothing in this subdivision (c)(2) shall be construed to allow a licensed water well installer or contractor to alter the existing electrical service to any building or structure.

(d) Nothing in this chapter shall be construed as repealing, modifying, or affecting in any way the provisions of § 17-25-101 et seq.

(e) Nothing in this chapter shall be construed to require an employee of a hospital to hold a license in order to perform minor repairs or make minor alterations to existing electrical facilities during the normal

performance of his or her duties with a hospital licensed by the Department of Health.

(f) For the purposes of this chapter, the term “industry” means manufacturing, processing and refining facilities, warehouses, distribution facilities, repair and maintenance facilities, agricultural facilities, and corporate and management offices located on industrial sites.

History. Acts 1979, No. 870, § 13; A.S.A. 1947, § 71-5312n; Acts 1997, No. 1289, § 2; 1999, No. 493, § 1; 1999, No. 894, § 1; 2001, No. 1776, § 1.

Cross References. Arkansas Electrical Code Authority Act, § 20-31-101 et seq.

17-28-103. Disposition of funds.

All funds received by the Board of Electrical Examiners of the State of Arkansas under the provisions of this chapter shall be deposited as special revenues into the State Treasury to the credit of the Department of Labor Special Fund, there to be used by the Department of Labor in carrying out the functions, powers, and duties as set out in this chapter and to defray the costs of the maintenance, operation, and improvements required by the department in carrying out the functions, powers, and duties otherwise imposed by law on the department or the Director of the Department of Labor.

History. Acts 1997, No. 1289, § 3; 2001, No. 577, § 5.

Cross References. Department of Labor Special Fund, § 19-5-1211.

SUBCHAPTER 2 — BOARD OF ELECTRICAL EXAMINERS OF THE STATE OF ARKANSAS

SECTION.
17-28-201. Creation — Members.
17-28-202. Duties of board and Department of Labor.

SECTION.
17-28-203. Examinations — Fees.
17-28-204. Hearing — Appeal.

Effective Dates. Acts 1981, No. 701, § 3: Mar. 24, 1981. Emergency clause provided: “It is hereby found and determined by the General Assembly that the authority of the Arkansas Department of Labor to enforce the Electrician’s Licensing Law is in doubt; that such confusion needs to be immediately resolved and the Department of Labor specifically granted such authority; and that this act so provides. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1983, No. 131, § 6 and No. 135, § 6: Feb. 10, 1983. Emergency clauses provided: “It is hereby found and determined by the General Assembly that state boards and commissions exist for the singular purpose of protecting the public health and welfare; that citizens over 60 years of age represent a significant percentage of the population; that it is necessary and proper that the older population be represented on such boards and commissions; that the operations of the boards and commissions have a profound effect on the daily lives of older Arkansans; and that the public voice of older citizens should not be muted as to questions com-

ing before such bodies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1983, No. 866, § 6: Mar. 28, 1983. Emergency clause provided: “It has been found and is hereby declared by the General Assembly of the State of Arkansas that the lack of a state industrial maintenance electrician licensing procedure has caused considerable hardships on the people of this state, and the provision of this act will provide an adequate remedy for the situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of public peace, safety and health shall be in full force from and after its passage and approval.”

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: “It is

hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

17-28-201. Creation — Members.

(a) There is created a Board of Electrical Examiners of the State of Arkansas.

(b) The board shall consist of the Director of the Department of Labor or his or her authorized representative and eight (8) other members who shall be residents of this state appointed by the Governor with the advice and consent of the Senate:

(1) One (1) member shall be the chief electrical inspector of a municipality within the state;

(2) One (1) member shall be a licensed professional engineer engaged primarily in the design or maintenance of electrical installations;

(3) One (1) member shall be an electrical contractor operating in this state;

(4) One (1) member shall be a master or supervising electrician;

(5) One (1) member shall be a representative of a public electric utility operating in this state;

(6) One (1) member shall be a representative of a private electric utility operating in this state;

(7) One (1) member shall represent the public and shall not be affiliated with any of the other groups represented on the board; and

(8) One (1) member shall represent the elderly, shall be sixty (60) years of age or older, and not actively engaged as or retired as an electrician. This member shall be appointed from the state at large, subject to confirmation by the Senate, and shall be a full voting member but shall not participate in the grading of examinations.

(c) The same person may not be both the public representative and the representative of the elderly.

(d) Each appointment shall be for a term of four (4) years or until a successor is appointed.

(e) In the event of a vacancy during a term, the Governor may appoint a replacement to fulfill the unexpired portion of the term.

(f) The board shall elect one (1) of its members to act as its chair for a term of one (1) year, and he or she shall have a vote on all matters before the board.

(g) For cause and after a hearing, any appointed member may be removed from office by the Governor.

(h) Each appointed member may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1979, No. 870, § 2; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-623 — 6-626, 71-5302; Acts 1997, No. 250, § 135.

Publisher's Notes. The terms of the

members of the Board of Electrical Examiners of the State of Arkansas, other than the representative of the elderly, are arranged so that two terms expire every year.

17-28-202. Duties of board and Department of Labor.

(a) It shall be the duty of the Board of Electrical Examiners of the State of Arkansas to:

(1) Adopt rules and regulations necessary for the implementation of this chapter;

(2) At least every six (6) months, conduct examinations of persons who apply for an electrician's license and grant licenses to qualifying applicants who have paid the prescribed fee; and

(3) Revoke or suspend the license of any licensee or the certification of any electrical apprentice for cause.

(b)(1) It shall be the duty of the Department of Labor to administer and enforce the provisions of this chapter.

(2) For the enforcement of this chapter, the Director of the Department of Labor or his or her designated employees shall have the authority to enter, during normal business hours, upon any private or public premises with right of access, ingress, and egress for the purpose of ascertaining whether a person has performed electrical work or installed or repaired electrical facilities thereon in accordance with the provisions of this chapter, § 20-31-101 et seq., and the regulations and standards adopted pursuant thereto.

History. Acts 1979, No. 870, § 3; 1981, No. 701, § 1; 1983, No. 866, § 2; A.S.A. 1947, § 71-5303; Acts 1997, No. 1289, § 4.

17-28-203. Examinations — Fees.

(a) The Board of Electrical Examiners of the State of Arkansas is authorized to conduct examinations of persons applying for a license as a master electrician, journeyman electrician, industrial maintenance

electrician, residential master electrician, air conditioning electrician, specialist sign electrician, or residential journeyman electrician. These persons shall pay fees established by the board, but in no event shall such examination fees exceed the following:

- (1) Master electrician \$100.00
- (2) Journeyman electrician 100.00
- (3) Industrial maintenance electrician 50.00
- (4) Residential master electrician 100.00
- (5) Residential journeyman electrician 100.00
- (6) Air conditioning electrician 100.00
- (7) Specialist sign electrician 100.00

(b) Any applicant who shall fail to pass the examination shall be permitted to take the next scheduled examination upon payment of the required fees.

History. Acts 1979, No. 870, § 4; 1983, No. 866, § 3; A.S.A. 1947, § 71-5304; Acts 1993, No. 831, § 1; 1997, No. 1289, § 5; 2009, No. 1188, § 2.

Amendments. The 2009 amendment, in (a), inserted “specialist sign electrician” in the introductory language, inserted (a)(7), and made a related change.

17-28-204. Hearing — Appeal.

All hearings conducted by the Board of Electrical Examiners of the State of Arkansas and all appeals taken from the decisions of the board shall comply with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1997, No. 1289, § 6.

SUBCHAPTER 3 — LICENSING

SECTION.

- 17-28-301. Electrician’s license — Issuance and renewal — Fees.
- 17-28-302. Electrical contractor license.
- 17-28-303. License nontransferable.
- 17-28-304. License requirements.
- 17-28-305. Local regulatory authority — Exceptions — Electrical inspectors.

SECTION.

- 17-28-306. Reciprocity.
- 17-28-307. Restricted lifetime master electrician license.
- 17-28-308. Electrical apprentices.
- 17-28-309. Penalties.
- 17-28-310. Grandfather clause.
- 17-28-311. Continuing education requirement.

A.C.R.C. Notes. Acts 1993, No. 1076, § 2, as amended by Acts 1995, No. 824, § 1, provided: “Applicants for a license pursuant to the provisions of this chapter shall be exempt from the examination requirement of 17-28-203, provided the applicant:

“(a) has a current license of the same class issued by an Arkansas municipality prior to April 1, 1995;

“(b) has not had a municipal electrician’s license or a state electrician’s license suspended or revoked for cause;

“(c) submits the appropriate fees; and

“(d) applies for a license prior to June 30, 1996.”

Effective Dates. Acts 1983, No. 866, § 6: Mar. 28, 1983. Emergency clause provided: “It has been found and is hereby declared by the General Assembly of the

State of Arkansas that the lack of a state industrial maintenance electrician licensing procedure has caused considerable hardships on the people of this state, and the provision of this act will provide an adequate remedy for the situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of public peace, safety and health shall be in full force from and after its passage and approval.”

Acts 1993, No. 1076, § 6: Apr. 12, 1993. Emergency clause provided: “It is hereby found and determined by the Seventy-Ninth General Assembly that the lack of qualified and licensed electricians on public works projects creates a public safety risk and increases the costs to the state and its political subdivisions on such projects. Therefore, an emergency is declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1999, No. 894, § 6: Mar. 29, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that Act 1289 of 1997 is making it difficult or impossible for industry to hire new employees to perform electrical work due to a severe shortage in licensed journeyman and master electricians in Arkansas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If

the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2007, No. 495, § 4: Mar. 26, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that capital improvement and maintenance projects at industry facilities often require substantial numbers of qualified electricians to perform electrical work on a temporary basis. A significant number of qualified electricians from outside Arkansas have been performing such work under temporary licenses authorized by law. However, the limitations on the renewal of the temporary licenses are making it more difficult to find qualified electricians to work on Arkansas projects, and are threatening to substantially increase industry construction and maintenance costs, delay desirable projects, and place Arkansas industries at a competitive disadvantage compared to industries in other states. Additionally, requiring an apprentice electrician to re-enroll in a school or training program he or she has just completed in order to work is an economic hardship on the apprentice as well as the electrical contractor who employs such an apprentice. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

17-28-301. Electrician’s license — Issuance and renewal — Fees.

(a) Individuals passing the master, journeyman, residential master, residential journeyman, air conditioning electrician, specialist sign electrician, or industrial maintenance electrician’s examination as specified in § 17-28-203 shall be issued a license of the same class as that of the examination upon payment of the following fees:

- (1) Master electrician \$50.00
- (2) Journeyman electrician 25.00
- (3) Industrial maintenance electrician 25.00

- (4) Residential master electrician 50.00
- (5) Residential journeyman electrician 25.00
- (6) Air conditioning electrician 25.00
- (7) Specialist sign electrician25.00.

(b)(1) Licenses shall expire on the date indicated on the licenses. Licenses shall expire on the last day of the month, one (1) year following the date of the original license.

(2) The license may be renewed for a period of one (1), two (2), or three (3) years with the fee to be as follows:

- (A) Master electrician \$50.00 per year
- (B) Journeyman electrician 25.00 per year
- (C) Industrial maintenance electrician 25.00 per year
- (D) Residential master electrician 50.00 per year
- (E) Residential journeyman electrician 25.00 per year
- (F) Air conditioning electrician 25.00 per year
- (G) Specialist sign electrician 25.00 per year.

(3) Any licensee may renew his or her license within six (6) months following the expiration date on the license by paying the renewal fee as indicated in subdivision (b)(2) of this section.

(4) If a licensee shall fail to renew his or her license within six (6) months after the expiration date on the license, the licensee may renew his or her license by paying a penalty of ten dollars (\$10.00) for a journeyman or residential journeyman electrician, ten dollars (\$10.00) for an industrial maintenance electrician or air conditioning electrician, and twenty dollars (\$20.00) for a master electrician or a residential master electrician, in addition to the regular renewal fees.

(5) If the license is not renewed within one (1) year after the expiration date on the license, the licensee shall be required to take another examination as administered by the Board of Electrical Examiners of the State of Arkansas.

(c) The registration fee for an electrical apprentice shall be ten dollars (\$10.00) annually. Apprentice registration certificates shall expire on the last day of the month, one (1) year following the date of original registration.

(d) The board is authorized to issue a temporary license as a master electrician or journeyman electrician that is valid for no more than six (6) months and renewable one (1) time only for industry projects as defined in this chapter, upon submission by the applicant of the following:

(1) A temporary license fee in the amount established by subsection (a) of this section;

(2) A completed application on a form furnished and approved by the board; and

(3) Evidence that the applicant:

(A) Holds a current license of the same classification issued by another state; or

(B) Meets the experience qualifications required under rules promulgated by the board for a temporary master electrician or a temporary journeyman electrician.

(e) Notwithstanding any restrictions in subsection (d) of this section, the board may issue and renew a temporary license as a master electrician or journeyman electrician for regularly scheduled or emergency maintenance work or shut-downs of not longer than six (6) weeks on industry projects as defined in this chapter.

History. Acts 1979, No. 870, §§ 5, 6; 1983, No. 866, § 4; 1985, No. 355, § 1; A.S.A. 1947, §§ 71-5305, 71-5306; Acts 1993, No. 831, § 2; 1997, No. 1289, § 7; 1999, No. 894, § 2; 2007, No. 495, §§ 1, 2; 2009, No. 312, § 1; 2009, No. 1188, § 3.

Amendments. The 2007 amendment substituted “subsection (a) of this section” for “§ 17-25-303(a)” in (d)(1); added (e); and made a stylistic change.

The 2009 amendment by No. 312 redesignated (d), rewrote (d)(3)(B), and made related and minor stylistic changes.

The 2009 amendment by No. 1188, in (a), inserted “specialist sign electrician” in the introductory language, inserted (a)(7), and made a related change; and inserted (b)(1)(G).

17-28-302. Electrical contractor license.

(a) Any person, member, or employee of a firm, partnership, or corporation desiring to engage in the business of electrical contractor may apply for and be issued a license upon satisfying the Board of Electrical Examiners of the State of Arkansas that he or she or it is either a master electrician or employs a master electrician as its superintendent or manager and shall pay a license fee in the amount of one hundred dollars (\$100) per year.

(b) Any electrical contractor having met the requirements of this chapter may work in any municipality in the state without further examinations after first showing evidence of state license as described in this chapter and paying such fees as required by the municipality in which the work is to be performed.

History. Acts 1979, No. 870, § 7; A.S.A. 1947, § 71-5307.

17-28-303. License nontransferable.

No license certificates issued by the Board of Electrical Examiners of the State of Arkansas shall be assignable or transferable.

History. Acts 1979, No. 870, § 12; A.S.A. 1947, § 71-5312.

Publisher’s Notes. Acts 1979, No. 870, § 13, provided that nothing in this chap-

ter should be construed as repealing, modifying, or affecting in any way the provisions of the Arkansas Contractor’s Licensing Law, § 17-25-101 et seq.

17-28-304. License requirements.

No person shall perform electrical work in this state or display or use any title, sign, card, advertisement, or other device to indicate that the person performs electrical work or is an electrician unless the person has first obtained a license to perform electrical work pursuant to the provisions of this chapter, or the individual is exempted from licensing pursuant to the provisions of this chapter.

History. Acts 1979, No. 870, § 9; A.S.A. 1947, § 71-5309; Acts 1993, No. 1076, § 1; 1997, No. 1289, § 8.

Publisher's Notes. As originally amended by Acts 1997, No. 1289, § 8, this section began: "Beginning July 1, 1998,".

17-28-305. Local regulatory authority — Exceptions — Electrical inspectors.

(a) Any individual licensed or registered under the provisions of this chapter shall not be subject to examination or licensing by any city or county in order to perform electrical work.

(b) Any city or town may by ordinance, rules, regulations, or contract prescribe rules, regulations, and standards for the materials used in the construction, installation, and inspection of all electrical work in the city or county, provided the rules, regulations, or standards are not in conflict with the standards prescribed by the Board of Electrical Examiners of the State of Arkansas pursuant to the authority of §§ 17-28-202 and 20-31-104. Provided, that a city or county may by ordinance require a person, before doing electrical work on his or her primary residence, to demonstrate a technical competency to comply with the city or county standards. If the city has adopted an ordinance to exercise its territorial planning jurisdiction and if the city and county agree to authorize such, a city may exercise jurisdiction over the construction, installation, and inspection of electrical work within the city's territorial jurisdiction for planning authorized under § 14-56-413.

(c) Any city or county may establish by ordinance, rules, and regulations a system of permits and inspections for the installation, repair, and maintenance of electrical facilities and electrical work.

History. Acts 1979, No. 870, § 8; A.S.A. 1947, § 71-5308; Acts 1997, No. 1289, § 9.

17-28-306. Reciprocity.

The Board of Electrical Examiners of the State of Arkansas shall be authorized to issue licenses to those applicants holding equivalent licenses in other states, upon payment of the required fees and submission of proof of license in that state, provided an agreement has been reached with that state to recognize the electrical licenses held by Arkansas residents.

History. Acts 1979, No. 870, § 11; A.S.A. 1947, § 71-5311; Acts 1997, No. 1289, § 10.

17-28-307. Restricted lifetime master electrician license.

(a)(1) Upon reaching the age of sixty-five (65), or any time thereafter, any person who has been a licensed master electrician licensed by the Board of Electrical Examiners of the State of Arkansas for not less than

twelve (12) years may apply for a restricted lifetime master electrician license.

(2) This license shall be issued upon satisfactory proof of age and upon payment of a fee prescribed by the board.

(b) The board shall promulgate rules and regulations necessary to carry out the provisions of this section.

History. Acts 1995, No. 1121, § 1.

17-28-308. Electrical apprentices.

(a) Upon proper application and payment of the fee, the Board of Electrical Examiners of the State of Arkansas shall register as an electrical apprentice and issue a certificate of registration to any person who furnishes satisfactory proof that the applicant is enrolled in a school or training course for electrical apprentices certified by the Bureau of Apprenticeship and Training of the United States Department of Labor.

(b) The board shall take such actions as are reasonably necessary or appropriate to supervise and enforce apprenticeship supervision ratios established by the board by regulation.

(c) Notwithstanding the provisions of subsection (a) of this section, an apprentice who has successfully completed a certified school or training program and has been released for testing may continue to renew his or her apprentice registration card, if otherwise qualified, without enrolling in a school or training program.

History. Acts 1997, No. 1289, § 11; **Amendments.** The 2007 amendment 2001, No. 1776, § 2; 2007, No. 495, § 3. added (c).

17-28-309. Penalties.

(a) The Director of the Department of Labor is authorized to petition any court of competent jurisdiction to enjoin or restrain any person who performs electrical work without a license or who otherwise violates the provisions of this chapter.

(b)(1) A civil penalty may be assessed against any person, firm, or corporation by the Department of Labor and subject to appeal and hearing before the Board of Electrical Examiners of the State of Arkansas according to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., if it is determined that the person, firm, or corporation has violated any:

(A) Provision of this chapter;

(B) Provision in the Arkansas Electrical Code Authority Act, § 20-31-101 et seq.;

(C) Rule, regulation, or order issued or promulgated by the board;
or

(D) Condition of a license, certificate, or registration issued by the board.

(2) For each violation, the penalty shall not exceed the following:

- (A) Two hundred fifty dollars (\$250) for a first offense;
- (B) Seven hundred fifty dollars (\$750) for a second offense; or
- (C) One thousand dollars (\$1000) for a third offense.

(3) Each day of a continuing violation is a separate violation for purposes of penalty assessment.

(4) Assessment of a civil penalty by the board shall be made no later than two (2) years after the date of the occurrence of the violation.

(5) If any person, firm, or corporation against whom a civil penalty has been imposed fails to pay the penalty within sixty (60) days of the board's decision, the director may file an action in a court of competent jurisdiction to collect the civil penalty without paying costs or giving bond for costs.

(6) Any penalties collected under this section shall be deposited as special revenues into the State Treasury to the credit of the Department of Labor Special Fund, there to be used by the Department of Labor in carrying out the functions, powers, and duties of this chapter.

History. Acts 1997, No. 1289, § 12; ... State of Arkansas" for "by the Board of
2003, No. 1055, § 1; 2005, No. 1230, § 1. Electrical Examiners of the State of Ar-
Amendments. The 2005 amendment, kansas on any person, firm, or corporation
in (b)(1), substituted "against any person if after a hearing" and inserted "if."

17-28-310. Grandfather clause.

(a) Applicants for a license under this chapter shall be exempt from the examination requirement of § 17-28-203, provided that the applicant:

(1) Is qualified by experience requirements to take the examination for a particular license classification under the provisions of this chapter and the regulations of the Board of Electrical Examiners of the State of Arkansas;

(2) Has not had a municipal electrician's license or a state electrician's license of any classification revoked or suspended for cause;

(3) Submits the appropriate fee; and

(4) Applies for a license before July 1, 1998.

(b) Notwithstanding any provision to the contrary, an applicant for a license under this section shall be exempt from the journeyman electrician examination requirement of § 17-28-203 if he or she has completed electrical apprenticeship training and education under a bona fide apprenticeship program registered with the United States Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training and he or she meets the requirements of subdivisions (a)(2)-(4) of this section.

(c) An applicant for a specialist sign electrician license under this chapter shall be exempt from the examination requirement of § 17-28-203 if the applicant:

(1) Is qualified by experience requirements to take the examination for a particular license classification under this chapter and the rules of the board;

(2) Has not had a municipal electrician's license or a state electrician's license of any classification revoked or suspended for cause;

(3) Submits the appropriate fee; and

(4) Applies for the specialist sign electrician license before September 1, 2009.

History. Acts 1997, No. 1289, § 13; added (c), and made minor stylistic changes. 2009, No. 1188, § 4.

Amendments. The 2009 amendment

17-28-311. Continuing education requirement.

(a) No journeyman electrician license or master electrician license shall be renewed unless the licensee completes at least eight (8) hours of continuing education for each National Electrical Code cycle.

(b)(1) The Board of Electrical Examiners of the State of Arkansas shall promulgate rules to set standards for continuing education for licensees under this section.

(2) The rules shall include, but not be limited to, provisions of the National Electrical Code, as in effect on January 1, 2005.

History. Acts 2005, No. 2291, § 1.

Index to Title 17 (1-28)

A

ABSTRACTERS.

Appeals.

- Certificate of authority.
Revocation, §17-11-341.
- Certificate of registration.
Revocation, §17-11-341.

Applications.

- Certificate of authority, §17-11-321.
Renewal of certificate, §17-11-322.
- Certificate of registration, §17-11-302.
Reapplication, §17-11-304.
Temporary certificates, §17-11-305.

Attorneys.

- Certificate of registration.
Issuance of certificate without
examination and payment of
fee, §17-11-302.
- Examinations.
Certificate of registration.
Issuance of certificate without
examination and payment of
fee, §17-11-302.

Board.

- Created, §17-11-401.
- Members, §17-11-401.
- Organization of officers, §17-11-402.
- Powers and duties, §17-11-403.

Bonds, surety, §17-11-324.

Business of abstracting.

- Defined, §17-11-102.

Certificate of authority.

- Applications, §17-11-321.
Renewal of certificate, §17-11-322.

- Defined, §17-11-102.

- Doing business.

- Certificate required, §17-11-320.

- Expiration, §17-11-322.

- Fees.

- Application fee, §17-11-321.

- Issuance.

- Generally, §17-11-321.

- Notice.

- Expiration of certificate, §17-11-322.

- Records.

- Access to public records, §17-11-323.

- Renewal, §17-11-322.

ABSTRACTERS —Cont'd

Certificate of authority —Cont'd

- Required, §17-11-320.
- Revocation, §17-11-340.
Appeal, §17-11-341.
Grounds, §17-11-340.
Procedure, §17-11-341.

Certificate of registration.

- Applications, §17-11-302.
Reapplication, §17-11-304.
Temporary certificates, §17-11-305.

Attorneys.

- Issuance of certificate without
examination and payment of
fee, §17-11-302.
- Display, §17-11-304.
- Examinations, §17-11-303.
Fee for examination to accompany
application, §17-11-302.
Notice, §§17-11-302, 17-11-305.
- Expiration of temporary certificate,
§17-11-305.

Fees.

- Annual fee, §17-11-304.
Temporary certificates, §17-11-305.
- Form, §17-11-304.
- Issuance.
Generally, §17-11-304.
- Necessity, §17-11-301.
- Notice.

- Examinations, §17-11-305.

- Reapplication, §17-11-304.

- Required, §17-11-301.

- Revocation, §17-11-340.

- Appeal, §17-11-341.

- Grounds, §17-11-340.

- Procedure, §17-11-341.

- Temporary certificates, §17-11-305.

- Terms of certificates, §17-11-304.

- Temporary certificates, §17-11-305.

Citation of act.

- Short title, §17-11-101.

Clerical assistants.

- Unregistered clerical assistants.
Employment not prohibited,
§17-11-306.

Definitions, §17-11-102.

Evidence.

- Abstract as evidence, §17-11-343.

ABSTRACTERS —Cont'd**Examinations.**

Attorneys.

Certificate of registration.

Issuance of certificate without examination and payment of fee, §17-11-302.

Certificate of registration, §17-11-303.

Fee for examination to accompany application, §17-11-302.

Notice, §§17-11-302, 17-11-305.

Fees.

Certificate of registration.

Examination fee to accompany application, §17-11-302.

Notice.

Certificate of registration, §§17-11-302, 17-11-305.

Fees.

Certificate of authority.

Application fee, §17-11-321.

Certificate of registration.

Annual fee, §17-11-304.

Temporary certificates, §17-11-305.

Examinations.

Certificate of registration.

Examination fee to accompany application, §17-11-302.

Fines, §17-11-103.**Insurance.**

Bonds, surety.

Liability insurance in lieu of bond, §17-11-324.

Notice.

Certificate of authority.

Expiration of certificate, §17-11-322.

Certificate of registration.

Examinations, §§17-11-302, 17-11-305.

Penalties, §17-11-103.**Records.**

Public records.

Access, §17-11-323.

Registration.

Certificate of registration, §§17-11-301 to 17-11-305.

Seals and sealed instruments.

Licensees' seals, §17-11-342.

Stenographic assistants.

Unregistered stenographic assistants.

Employment not prohibited, §17-11-306.

Title of act.

Short title, §17-11-101.

ACCOUNTANTS.**Advertising.**

Evidence of practice, §17-12-111.

ACCOUNTANTS —Cont'd**Board of public accountancy.**

Appointment of members, §17-12-201.

Compensation, §17-12-201.

Creation, §17-12-201.

Duties.

Generally, §17-12-203.

Election of officers, §17-12-202.

Established, §17-12-201.

Evidence.

Judicial notice.

Seal of board, §17-12-202.

Expenses paid, §17-12-201.

Funds.

Disposition, §17-12-204.

Judicial notice.

Seal of board, §17-12-202.

Members, §17-12-201.

Officers, §17-12-202.

Powers.

Generally, §17-12-203.

President.

Election, §17-12-202.

Proceedings, §17-12-202.

Revocation or suspension of license or certificate, §17-12-603.

Qualifications of members, §17-12-201.

Records.

Duty to keep record of proceedings, §17-12-202.

Reports, §17-12-204.

Rules and regulations.

Power to adopt, §17-12-203.

Seal of board, §17-12-202.

Secretary.

Election, §17-12-202.

Terms of members, §17-12-201.

Treasurer.

Election, §17-12-202.

Vacancies, §17-12-201.

Certified public accountants.

Construction and interpretation.

Statutes requiring preparation of documents by CPAs, §17-12-108.

Criminal background checks, §17-12-303.

Education requirement, §17-12-302.

Reciprocity, §17-12-308.

Examinations.

Credit for out-of-state examinations, §17-12-307.

Eligibility, §17-12-303.

Fees, §17-12-306.

Out-of-state examinations, §17-12-307.

Reciprocity, §17-12-308.

Reexaminations, §17-12-305.

Fees, §17-12-306.

ACCOUNTANTS —Cont'd**Certified public accountants —Cont'd****Examinations —Cont'd**

Resource assistance, §17-12-304.

Times, §17-12-304.

Experience requirement, §17-12-309.

Fees.

Examination fees, §17-12-306.

Firms, registration as, §17-12-401.

Sanctions for violations, §17-12-602.

Inactive status, §17-12-505.

Initial license.

Time to obtain, §17-12-313.

Offices.

Registration, §17-12-403.

Prior law.

Certificates held under, §17-12-310.

Qualifications.

Generally, §17-12-301.

Substantial equivalency, §17-12-311.

Reciprocity, §17-12-308.

Reexaminations, §17-12-305.

Fees, §17-12-306.

Reinstatement, §17-12-504.

Renewal of license.Continuing education requirements,
§17-12-502.

Fee, §17-12-504.

Inactive status, §17-12-505.

Qualifications, §17-12-501.

Quality review of practice units,
§17-12-507.**Requirements of certification.**

Generally, §17-12-301.

Residency requirement.

Reciprocity, §17-12-308.

Retroactive effect.Certificates held under prior law,
§17-12-310.Revocation, suspension or denial of
license or certificate, §17-12-602.

Grounds, §17-12-601.

Proceedings to revoke or suspend,
§17-12-603.

Reinstatement, §17-12-604.

State board of public accountancy.

Lists, §17-12-301.

Substantial equivalency standards,
§17-12-311.Time for obtaining initial license,
§17-12-313.

Unauthorized use of title, §17-12-106.

Unregistered firms, licensee
association with prohibited,
§17-12-404.**Citation of chapter, §17-12-101.****Commissions.**Paying commission for business.
Prohibited, §17-12-106.**ACCOUNTANTS —Cont'd****Construction and interpretation.**

Certified public accountants.

Statutes requiring preparation of
documents by CPAs, §17-12-108.**Corporations.****Names.**

Prohibited wording, §17-12-106.

Offices.

Registration, §17-12-403.

Registration.Certified public accountant firms,
§17-12-401.Licensees associated with
unregistered firm, §17-12-404.

Offices, §17-12-403.

Public accountant firms, §17-12-402.

Sanctions for violations, §17-12-602.

**Criminal background checks,
§17-12-303.****Definitions, §17-12-103.****Education.**

Certified public accountants.

Requirement, §17-12-302.

Evidence.**Judicial notice.**Seal of state board of public
accountancy, §17-12-202.**Experience requirement for
certificate, §17-12-309.****Fees.**

Certified public accountants.

Examination fees, §17-12-306.

Commissions.Paying commission for business.
Prohibited, §17-12-106.**Contingent fees.**

Prohibited, §17-12-106.

License renewal, §17-12-504.

Permits.

Annual permits.

Renewal fee, §17-12-504.

Funds.

State board of public accountancy.

Disposition of funds, §17-12-204.

Inactive status, §17-12-505.**Injunctions.**

Unlawful acts, §17-12-105.

Judicial notice.Seal of state board of public
accountancy, §17-12-202.**Legislative declaration.**

Purpose of chapter, §17-12-102.

Limited liability companies.**Registration.**Certified public accountant firms,
§17-12-401.

ACCOUNTANTS —Cont'd**Limited liability companies —Cont'd**

Registration —Cont'd

- Licensee association with
unregistered firms, §17-12-404.
- Public accountant firms, §17-12-402.
- Sanctions for violations, §17-12-602.

Malpractice.

Privity of contract.

- No liability to persons not in privity,
§17-12-701.
- Applicability of provisions,
§17-12-702.

Non-licensees, permissible acts,

§17-12-107.

Partnerships.

Names.

- Prohibited wording, §17-12-106.

Offices.

- Registration, §17-12-403.

Registration.

- Certified public accountant firms,
§17-12-401.
- Licensees associated with
unregistered firm, §17-12-404.
- Offices, §17-12-403.
- Public accountant firms, §17-12-402.
- Sanctions for violations, §17-12-602.

Penalties.

- Unlawful acts, §17-12-104.

Permits.

Annual permits.

- Renewal fee, §17-12-504.

Practice of accountancy.

- Prohibited acts, §17-12-106.
- Exceptions, §17-12-107.
- Single act evidence of practice,
§17-12-111.

Privity of contract.

- No liability to persons not in privity,
§17-12-701.

Professional conduct rules,

§17-12-203.

Prohibited acts, §17-12-106.

- Exceptions, §17-12-107.
- Injunctions, §17-12-105.
- Penalties, §17-12-104.

Public accountants.

- Firm registration, §17-12-402.
- Sanctions for violations, §17-12-602.
- Licensure, §17-12-312.
- Initial license, time to obtain,
§17-12-313.
- Offices.
- Registration, §17-12-403.
- Registration, §17-12-312.
- Foreign accountants, §17-12-404.
- Offices, §17-12-403.

ACCOUNTANTS —Cont'd**Public accountants —Cont'd**

Registration —Cont'd

- Reciprocity, §17-12-404.
- Reinstatement, §17-12-504.
- Renewal of license.
- Continuing education requirements,
§17-12-502.
- Fee, §17-12-504.
- Inactive status, §17-12-505.
- Qualifications, §17-12-501.
- Quality review of practice units,
§17-12-507.

- Revocation, suspension or denial of
license, §17-12-602.

Grounds, §17-12-601.

- Proceedings to revoke or suspend,
§17-12-603.

Reinstatement, §17-12-604.

- Unauthorized use of title, §17-12-106.

- Unregistered firms, licensee
association with prohibited,
§17-12-404.

Purpose of chapter, §17-12-102.**Quality review of each practice unit,**
§17-12-507.**Reciprocity.**

- Certified public accountants,
§17-12-308.
- Substantial equivalency standards,
§17-12-311.

Records.

- Board of public accountancy.
- Duty to keep records of proceedings,
§17-12-202.
- Working papers of accountant.
- Ownership, §17-12-109.

Register of practitioners, §17-12-203.**Registration.**

- Certified public accountant firms,
§17-12-401.
- Offices, §17-12-403.
- Sanctions for violations, §17-12-602.
- Offices, §17-12-403.
- Public accountant firms, §17-12-402.
- Offices, §17-12-403.
- Sanctions for violations, §17-12-602.
- Register of practitioners, §17-12-203.

Reports.

- Non-licensees, disclosures required,
§17-12-107.
- State board of public accountancy,
§17-12-204.

Residents.

- Certified public accountants.
- Reciprocity for residency
requirements, §17-12-308.

ACCOUNTANTS —Cont'd**Rules and regulations.**

State board of public accountancy.

Power to adopt, §17-12-203.

Sanctions for violations, §17-12-602.**Seals and sealed instruments.**

State board of public accountancy,
§17-12-202.

Sole proprietorships.

Firm registration, §17-12-402.

Certified public accountant firms,
§17-12-401.

Title of chapter, §17-12-101.**Working papers.**

Ownership, §17-12-109.

ACCOUNTINGS BY FIDUCIARIES.**Collection agencies.**

Annual accounting.

Renewal of license.

Condition for renewal, §17-24-304.

Requirement, §17-24-310.

ACTIONS.**Appraisers.**

Psychologically impacted property.

Damages for nondisclosure,
§17-10-101.

Violations of law, §17-14-308.

Athletic agents.

Educational institutions right of action
against, §17-16-116.

Auctions and auctioneers.

Licenses.

Prerequisite to actions by
auctioneers, §17-17-106.

Nonresidents.

Action against nonresident
auctioneer, §17-17-306.

Bail bondsmen.

On certificate of deposit or letter of
credit, §17-19-208.

Real estate brokers and salesmen.

Psychologically impacted property.

Damages for nondisclosure,
§17-10-101.

Student-athletes.

Educational institutions right of action
against.

Violation of uniform athletic agents
act, §17-16-116.

Universities and colleges.

Student-athletes.

Educational institutions right of
action against.

Violation of uniform athletic
agents act, §17-16-116.

ADVERTISING.**Accountants.**

Evidence of practice, §17-12-111.

ADVERTISING —Cont'd**Auctions and auctioneers.**

License number to be included,
§17-17-310.

Cosmetology.

False or deceptive statements.

Grounds for disciplinary action,
§17-26-105.

AFFIDAVITS.**Bail bondsmen.**

Transfer of license, §17-19-202.

AGENTS.

**Athlete agents, §§17-16-101 to
17-16-119.**

AGRICULTURAL CONSULTANTS.**Applicability of provisions.**

Forestry consultants and certain
government workers, §17-13-104.

Citation of act.

Short title, §17-13-101.

Compensation.

Promotional compensation.

Restricted, §17-13-109.

Education.

Licenses.

Qualifications, §17-13-107.

Fees.

Licenses.

Disposition of fees, §17-13-110.

Plant board to establish fees,
§17-13-106.

**Forestry consultants and certain
government workers.**

Provisions not applicable to,
§17-13-104.

Functions, §17-13-103.**Legislative intent, §17-13-102.****Licenses.**

Assignment.

Prohibited, §17-13-108.

Expiration, §17-13-108.

Fees.

Disposition, §17-13-110.

Plant board to establish, §17-13-106.

Functions of licensed agricultural
consultant, §17-13-103.

Issuance, §17-13-108.

Penalties.

Holding self out without license,
§17-13-105.

Plant board.

Duties as to, §17-13-106.

Qualifications, §17-13-107.

Transfer.

Prohibited, §17-13-108.

Penalties.

Holding self out without license,
§17-13-105.

AGRICULTURAL CONSULTANTS

—Cont'd

Plant board.

Duties, §17-13-106.

Promotional compensation.

Restricted, §17-13-109.

Purpose of provisions, §17-13-102.**Rules and regulations.**

Plant board, §17-13-106.

Short title of act, §17-13-101.**Title of act.**

Short title, §17-13-101.

AGRICULTURE.**Consultants, §§17-13-101 to 17-13-110.****ALTERNATIVE SERVICES.****Contractors.**

Defined, §17-25-401.

APPEALS.**Abstracters.**

Certificate of authority.

Revocation, §17-11-341.

Certificate of registration.

Revocation, §17-11-341.

Accountants.

Revocation or suspension of license or certificate, §17-12-603.

Auctions and auctioneers.

Disciplinary decisions, §17-17-408.

Penalties imposed, §17-17-114.

Bail.

Bail bondsmen.

Licenses.

Suspension and revocation,
§17-19-208.**Barbers.**

Certificate of registration.

Denial, suspension or revocation,
§17-20-309.**Collection agencies.**

Licenses.

Revocation, suspension or refusal,
§17-24-308.**Contractors.**Decisions of licensing board,
§17-25-312.**APPRAISALS AND APPRAISERS.****Actions against appraisers for violations, §17-14-308.****Applicability of chapter.**

Exemptions, §17-14-104.

Application fee for registering, licensing or certifying, §17-14-203.**Appraisal management company registration, §§17-14-401 to 17-14-412.**

Applicability of provisions, §17-14-412.

APPRAISALS AND APPRAISERS

—Cont'd

Appraisal management company registration —Cont'd

Application contents, §17-14-405.

Definitions, §17-14-402.

Denial, revocation or suspension of registration, §17-14-410.

Disciplinary actions, §17-14-410.

Fees, §17-14-406.

Injunctions, §17-14-411.

Prohibited activities, §17-14-408.

Registry of applicants, §17-14-409.

Renewal, §17-14-406.

Required, §17-14-403.

Requirements for registration,
§17-14-405.

Responsibilities and duties of registrants, §17-14-407.

Roster, §17-14-409.

Rules promulgation, §17-14-404.

Short title, §17-14-401.

Appraiser licensing and certification board.Appointment and removal of members,
§17-14-201.

Meeting, quorum, voting, §17-14-204.

Members, §17-14-201.

Notice of meeting, requirement,
§17-14-204.Powers and duties, §§17-14-202,
17-14-203.

Terms, chair, expenses, §17-14-201.

Business entities.

Registration, license or certificate.

Not issued to, §17-14-301.

Citation of chapter, §17-14-101.**Code of ethics.**

Compliance with, §17-14-305.

Compensation.

Right of state licensed or state registered appraiser to appraise property for, §17-14-105.

Complaints and disciplinary proceedings, §17-14-206.Appeal of adverse agency decision,
§17-14-205.

Board to establish administrative procedures, §17-14-203.

Executive sessions, §17-14-205.

Sample appraisals and work papers.

Public records, §17-14-205.

Construction and interpretation.Intent of general assembly,
§17-14-102.**Corporations.**

Registration, license or certificate not issued to, §17-14-301.

APPRAISALS AND APPRAISERS

—Cont'd

Damages.

Psychologically impacted property.
Action for damages for
nondisclosure, §17-10-101.

Definitions, §§17-10-101, 17-14-103.**Disciplinary proceedings**, §17-14-206.

Board to establish administrative
procedures, §17-14-203.

Documents.

Licensing and certification of
documents, §17-14-305.

**Examinations for registration,
licensure or certification.**

Board to adopt regulations,
§17-14-203.

Examination fee, §17-14-203.

Exemptions from chapter, §17-14-104.**Federally related transaction.**

Unlicensed or certified person not to
perform, §17-14-303.

Fees.

Application fee, §17-14-203.

Examination fee, §17-14-203.

Financial institutions.

Absence of liability for actions of
appraiser hired by institution,
§17-14-106.

Fines, §17-14-206.**Grounds for discipline**, §17-14-206.**Immunity of financial institutions.**

Alleged actions of appraisers,
§17-14-106.

Intent of general assembly,
§17-14-102.

Management company registration,
§§17-14-401 to 17-14-412.

Membership in other organizations,
§17-14-302.

Nonresidents.

License or certificate, §17-14-306.

Partnerships.

Registration, license or certificate not
issued to, §17-14-301.

**Qualification standards for
appraiser practicing in state.**

Board may establish, report, maintain
and update, §17-14-202.

Registered appraisers.

Minimum qualifying requirements,
§17-14-307.

Registration, license or certificate.

Appraisal management company
registration, §§17-14-401 to
17-14-412.

Business entities, not issued to,
§17-14-301.

APPRAISALS AND APPRAISERS

—Cont'd

Registration, license or certificate

—Cont'd

Membership in appraisal organization
not required, §17-14-302.

Registered appraiser, minimum
qualifying requirements,
§17-14-307.

Required, §17-14-302.

Temporary or nonresident license or
certificate, §17-14-306.

**Reporting standards for appraiser
practicing in state.**

Board may establish, report, maintain
and update, §17-14-202.

**Rights and privileges of licensed or
registered appraiser**, §17-14-105.

**Roster of appraisers practicing in
state.**

Board to maintain, §17-14-203.

Rules and regulation.

Adoption by appraiser licensing and
certification board, §17-14-203.

Seals, §17-14-305.**Service of process.**

Applicants not residents of state.

Consent to service upon secretary of
state, §17-14-306.

Short title of chapter, §17-14-101.**Signing or assistance with appraisal
report.**

Appraiser required to be
state-licensed, state-certified or
state-registered, §17-14-105.

**Subpoenas and subpoenas duces
tecum.**

Power of appraiser licensing and
certification board to issue,
§17-14-203.

**Terms registered, licensed or
certified.**

Use of, §17-14-304.

**Uniform standards for professional
appraisal practice.**

Compliance with, §17-14-305.

Unlicensed or certified person.

Federally related transaction.

Not eligible to perform, §17-14-303.

**Unlicensed, registered or certified
practice.**

Unlawful, §17-14-308.

**Use of terms registered, licensed or
certified**, §17-14-304.**Venue.**

Actions against appraisers for
violations, §17-14-308.

Violations, §17-14-308.

APPRENTICESHIP.**Electrical apprentices**, §17-28-308.**ARCHITECTS.****Attorney general.**Legal advisor to examining body,
§17-15-104.**Board of architects, landscape architects, and interior designers.**

Appointment of members, §17-15-201.

Complaint procedures, §17-15-203.

Composition, §17-15-201.

Duties.

Generally, §17-15-203.

Election of officers, §17-15-202.

Expenses, §17-15-201.

Examining body, §17-15-202.

Meetings, §17-15-202.

Members, §17-15-201.

Oaths.

Members, §17-15-201.

Power of president or secretary to
administer to witnesses,
§17-15-203.

Officers, §17-15-202.

Powers.

Generally, §17-15-203.

President.

Election, §17-15-202.

Oaths of witnesses.

Power to administer, §17-15-203.

Qualifications of members, §17-15-201.

Quorum, §17-15-202.

Records, §17-15-204.

Removal of members, §17-15-201.

Reports, §17-15-204.

Seal of board, §17-15-202.

Secretary.

Election, §17-15-202.

Oaths of witnesses.

Power to administer, §17-15-203.

Treasurer.

Election, §17-15-202.

Vacancies, §17-15-201.

Citation of act.

Short title, §17-15-101.

Complaints against, §17-15-203.**Continuing education**, §17-15-205.**Corporations.**

Registration and licensing, §17-15-303.

Fee, §17-15-311.

Definitions, §17-15-102.**Emergency assistance by out-of-state licensees**, §17-15-312.**Enforcement of provisions**,
§17-15-104.**Examinations.**

Registration and licensing, §17-15-304.

ARCHITECTS —Cont'd**Examining body.**

Attorney general.

Legal advisor, §17-15-104.

Name, §17-15-102.

Exemptions from chapter, §17-15-302.**Fees.**

Registration and licensing, §17-15-311.

Fines for violations of chapter,
§17-15-203.**Hearings.**

Complaint against, §17-15-203.

Registration and licensing.

Revocation proceedings, §17-15-309.

Infractions.

Violations of provisions, §17-15-105.

Interns, practice by, §17-15-312.**Notice.**

Complaint against, §17-15-203.

Practice by person holding national
but not state certification,
§17-15-312.

Registration and licensing.

Revocation proceedings, §17-15-309.

Nuisances.

Violations of provisions, §17-15-105.

Oaths.Board of architects, landscape
architects, and interior designers.

Oath of members, §17-15-201.

Witnesses.

Officers authorized to administer
oaths, §17-15-203.**Partnerships.**

Registration and licensing, §17-15-303.

Penalties.

Violations of act, §17-15-103.

Reciprocity.Practice by architect with national or
out-of-state certification,
§17-15-312.**Records.**Board of architects, landscape
architects, and interior designers,
§17-15-204.**Registration and licensing.**

Applications.

Fee, §17-15-311.

Certificate of registration.

Effect as evidence, §17-15-305.

Issuance, §17-15-305.

Reissuance, §17-15-310.

Renewal, §17-15-305.

Fee for annual renewal,
§17-15-311.

Corporations, §17-15-303.

Fee, §17-15-311.

Examinations, §17-15-304.

ARCHITECTS —Cont'd**Registration and licensing —Cont'd**

- Exemptions, §17-15-302.
- Fees, §17-15-311.
- Necessity, §17-15-301.
- Partnerships, §17-15-303.
- Qualifications of applicants, §17-15-304.
- Required, §17-15-301.
- Revocation, §17-15-308.
 - Grounds, §17-15-308.
 - Hearings, §17-15-309.
 - Notice of hearing, §17-15-309.
 - Proceedings, §17-15-309.
- Reissuance of certificate of registration, §17-15-310.
 - Fees, §17-15-311.
- Witnesses, §17-15-309.

Reports.

- Board of architects, landscape architects, and interior designers, §17-15-204.

Seals and sealed instruments.

- Board of architects, landscape architects, and interior designers, §17-15-202.
- Registrants, §17-15-307.

Title of act.

- Short title, §17-15-101.

Witnesses.

- Registration and licensing.
- Revocation proceedings, §17-15-309.

ARKANSAS BOARD OF**EXAMINERS IN COUNSELING.**

Counselors, §§17-27-201 to 17-27-203.

ARKANSAS STATE ATHLETIC COMMISSION.

General provisions, §§17-22-201 to 17-22-208.

ARKANSAS STATE BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS, AND INTERIOR DESIGNERS, §§17-15-201 to 17-15-205.**ARKANSAS STATE BOARD OF PUBLIC ACCOUNTANCY.****Accountants.**

- Board of public accountancy, §§17-12-201 to 17-12-204.

ATHLETE AGENTS, §§17-16-101 to 17-16-119.

Action by educational institution.

- Against agent or student-athlete, §17-16-116.

Administrative penalties, §17-16-117.

ATHLETE AGENTS —Cont'd**Agency contracts.**

- Cancellation, student-athlete's right, notice, §17-16-112.
- Electronic signatures, §17-16-119.
- Form, §17-16-110.
- Notice to institution of existence, §17-16-111.
- Prohibited conduct, §17-16-114.
 - Administrative penalties, §17-16-117.
 - Criminal penalties, §17-16-115.
- Provisions required, §17-16-110.
- Void.
 - Acting without certificate of registration, §17-16-104.
- Voidable.
 - Contract not in required form, §17-16-110.

Certificate of registration.

- Application for, §17-16-105.
- Copy of application submitted.
 - Holding certificate or license from another state, §17-16-105.
- Fee, §17-16-109.
- Issuance, §17-16-106.
- Prohibited conduct, §17-16-114.
 - Criminal penalties, §17-16-115.
- Renewal, §17-16-106.
- Required to act as agent, §17-16-104.
- Term of validity, §17-16-106.

Criminal penalties.

- Prohibited conduct, §17-16-115.

Damages to educational institution.

- Agent's or student-athlete's violation of act, §17-16-116.

Definitions, §17-16-102.**Discovery rule.**

- Accrual of educational institutions right of action, §17-16-116.

Educational institution's right of action.

- Agent or student-athlete, §17-16-116.

False or misleading information, §17-16-114.

Fees.

- Certificate of registration, §17-16-109.

Nonresident agents acting in state.

- Service of process on, §17-16-103.

Notice.

- Cancellation of agency contract.
 - Required by student-athlete, §17-16-112.
- Existence of agency contract.
 - Institution to receive, §17-16-111.

Prohibited conduct, §17-16-114.

- Criminal penalties, §17-16-115.

ATHLETE AGENTS —Cont'd

Records required, preservation,
§17-16-112.

Service of process on nonresident agents acting in state, §17-16-103.

Short title, §17-16-101.

Uniform athletic agents act,
§17-16-101.

Uniformity of application and interpretation of act, §17-16-118.

Voidable agency contracts.

Contract not in required form,
§17-16-110.

Void agency contracts.

Agent acting without certificate of registration, §17-16-104.

ATHLETIC COMMISSION.

Actions for violation of provisions.

Jurisdiction, §17-22-207.

Appointment of members, §17-22-201.

Authority, §17-22-302.

Generally, §17-22-204.

Boxing and wrestling licenses,

§§17-22-301 to 17-22-306.

Bonds, surety, §17-22-304.

Fees, §17-22-302.

Funds received by secretary of state,
§17-22-306.

Issuance of licenses, §17-22-302.

Matches and exhibitions authorized,
§17-22-301.

Refusal or revocation of license,
§17-22-305.

Unlicensed activities, §17-22-303.

Chairman, §17-22-202.

Combative sports elimination contests, §17-22-208.

Compensation, §17-22-201.

Secretary, §17-22-203.

Composition, §17-22-201.

Creation, §17-22-201.

Definitions, §17-22-101.

Elections.

Chairman, §17-22-202.

Expenses, §17-22-201.

Liability.

Personal liability of members and employees of commission,
§17-22-205.

Licenses.

Authority to issue annual licenses for promoters, etc., §17-22-204.

Members, §17-22-201.

Powers.

Generally, §17-22-204.

Qualifications of members,
§17-22-201.

ATHLETIC COMMISSION —Cont'd
Rules and regulations.

Authority to promulgate, §17-22-201.

Secretary, §17-22-203.

Duties and responsibilities,
§17-22-203.

Vacancies, §17-22-201.

ATTORNEY GENERAL.

Architects.

Legal advisor to examining body,
§17-15-104.

ATTORNEYS AT LAW.

Abstracters.

Certificate of registration.

Issuance to attorney without examination and payment of fee, §17-11-302.

Collection agencies.

Exemptions from chapter, §17-24-102.

ATTORNEYS' FEES.

Counselors.

Unlicensed practice, §17-27-104.

AUCTIONS AND AUCTIONEERS.

Actions.

Licenses.

Prerequisite to actions by auctioneers, §17-17-106.

Nonresidents.

Actions against nonresidents,
§17-17-306.

Advertising.

License number to be included,
§17-17-310.

Applicability of chapter, §17-17-104.

Auction owners.

Licenses, §17-17-307.

Cease and desist orders for violations, §17-17-115.

Citation of chapter, §17-17-101.

Complaints against.

Discipline, §§17-17-401 to 17-17-409.

Continuing education, §17-17-311.

Contract with seller required,
§17-17-112.

Definitions, §17-17-103.

Discipline, §§17-17-401 to 17-17-409.

Appeal of decision of board,
§17-17-408.

Appellate jurisdiction of circuit court,
§17-17-407.

Applicability of provisions, §17-17-402.

Construction of provisions, §17-17-403.

Educational use of funds, §17-17-406.

Education and recovery fund,
§17-17-401.

Educational purposes, §17-17-406.

AUCTIONS AND AUCTIONEERS

—Cont'd

Discipline —Cont'd

Education and recovery fund —Cont'd

Licensing fees to contribute to,
§17-17-404.

Payments from, §17-17-405.

Hearing procedure, §17-17-405.

Jurisdiction to award damages,
§17-17-407.Payment to aggrieved parties,
§17-17-405.Subrogation of rights against licensee
upon receipt of payment,
§17-17-409.**Education and recovery fund.**Discipline of licensees generally,
§§17-17-401 to 17-17-409.Trust fund to pay claims against
auctioneers, §17-17-401.**Exemptions from chapter, §17-17-104.****Fines for violations, §17-17-114.**

Grounds, §17-17-308.

**Injunctions for violations of
provisions, §17-17-113.****Inspection of suspected violators,
§17-17-115.****Intent of legislature, §17-17-102.****Internet auctions, applicability of
provisions to, §17-17-104.****Licenses.**

Auction owners, §17-17-307.

Board.

Actions to enjoin violations,
§17-17-113.

Administrative procedure act.

Applicability, §17-17-208.

Appointment, §17-17-201.

Compensation, §17-17-201.

Composition, §17-17-201.

Creation, §17-17-201.

Educational programs, §17-17-205.

Employees, §17-17-203.

Financially self-sustaining,
§17-17-205.Investigations of complaint,
§17-17-309.

Lists of licensees.

Publication, §17-17-206.

Organization, §17-17-202.

Proceedings, §17-17-208.

Qualifications of members,
§17-17-201.

Quorum, §17-17-202.

Records, §17-17-209.

Reports.

Semiannual financial report,
§17-17-204.**AUCTIONS AND AUCTIONEERS**

—Cont'd

Licenses —Cont'd

Board —Cont'd

Rules and regulations.

Promulgation, §17-17-207.

Seal, §17-17-209.

Secretary-treasurer, §17-17-204.

Supplies, §17-17-203.

Terms of office, §17-17-201.

Vacancies in office, §17-17-201.

Change of location, §17-17-302.

Complaints.

Discipline of licensees generally,
§§17-17-401 to 17-17-409.

Investigation by board, §17-17-309.

Continuing education requirements,
§17-17-311.

Criminal conviction.

Ineligibility for license, §17-17-312.

Criminal history background checks,
§17-17-312.

Examinations, §17-17-301.

Issuance, §17-17-302.

Lists of licensees.

Publication, §17-17-206.

Nonresidents, §17-17-304.

Reciprocity, §17-17-305.

Penalty in lieu of suspension or
revocation, §17-17-114.

Qualifications of applicant, §17-17-301.

Reciprocity.

Nonresidents, §17-17-305.

Renewal, §17-17-302.

Continuing education, §17-17-311.

Criminal history background checks,
§17-17-312.

Required, §17-17-105.

Penalty for violation of section,
§17-17-105.Prerequisite to actions by
auctioneers, §17-17-106.

Suspension or revocation, §17-17-308.

Penalty in lieu of, §17-17-114.

Municipal corporations.

Taxes or fees.

Exemption, §17-17-107.

Nonresidents.

Actions against, §17-17-306.

Licensing generally.

Reciprocity, §17-17-305.

Penalties.

Unlicensed acts, §17-17-105.

Purpose of chapter, §17-17-102.**Reciprocity.**

Licenses.

Nonresidents, §17-17-305.

AUCTIONS AND AUCTIONEERS

—Cont'd

Rules and regulations.

Licensing board.

Promulgation, §17-17-207.

Short title of chapter, §17-17-101.**B****BAIL.****Appeals.**

Bail bondsmen.

Licenses.

Suspension and revocation,
§17-19-208.**Bail bond.**Professional bail bond company,
§§17-19-102 to 17-19-104.**Bail bond company**, §§17-19-102 to
17-19-104.**Definitions.**

Bail bondsmen, §17-19-101.

Insurance.

Automobile insurance.

Negotiation or execution of bail
through insured's automobile
insurer or broker not affected,
§17-19-104.

Bail bondsmen.

Commissioner of insurance.
Defined, §17-19-101.**Licenses.**Bail bondsmen, §§17-19-201 to
17-19-212.**Motor vehicles.**Insured's automobile insurer or
broker.Negotiation or execution of bail not
affected, §17-19-104.**Penalties.**

Bail bond business.

Violation of provisions, §17-19-102.

BAIL BOND COMPANIES.**Automobile insurance.**Negotiation or execution of bail
through insured's automobile
insurer or broker not affected,
§17-19-104.**Violations of provisions.**

Penalties, §17-19-102.

Venue for civil or criminal proceedings,
§17-19-103.**BAIL BONDSMEN.****Appeals.**

Licenses.

Suspension and revocation,
§17-19-208.**BAIL BONDSMEN —Cont'd****Appearance bond**, §17-19-305.**Automobile insurance.**Negotiation or execution of bail
through insured's automobile
insurer or broker not affected,
§17-19-104.**Board.**

Duties, §17-19-206.

Certificate of deposit, §17-19-205.

Civil actions, §17-19-208.

Collateral.Prenumbered written receipt,
§17-19-302.**Commissioner of insurance.**

Defined, §17-19-101.

Compensation.

Limitations, §17-19-301.

Contents of bail bonds, §17-19-303.**Continuing education program**,
§§17-19-401 to 17-19-402.

Establishment of program, §17-19-402.

Fee schedule, §17-19-402.

Requirements.

Generally, §17-19-401.

Definitions, §17-19-101.**Examinations.**

Licenses, §17-19-204.

Form of bail bonds, §17-19-303.**Letters of credit**, §17-19-205.

Civil action, §17-19-208.

Licenses.

Appeals.

Suspension and revocation of
license, §17-19-208.

Transfer of license, §17-19-202.

Applications, §17-19-202.

Character references, §17-19-203.

Conditional licenses, §17-19-212.

Doing business.

Requirement of license, §17-19-201.

Examinations, §17-19-204.

Expiration, §17-19-207.

Fees, §17-19-202.

References.

Character references, §17-19-203.

Renewal, §17-19-207.

Requirement of license, §17-19-201.

Satisfying requirements, §17-19-206.

Suspension and revocation,
§17-19-208.Administrative penalties,
§17-19-211.

Review, §§17-19-208, 17-19-210.

Transfer, §17-19-202.

Licensing board, §§17-19-106 to
17-19-111.

Advertising, §17-19-109.

BAIL BONDSMEN —Cont'd**Licensing board —Cont'd**

- Agents, §17-19-110.
- Citation of act, §17-19-106.
- Company advertising, §17-19-109.
- Creation, §17-19-106.
- Educational requirements, §17-19-107.
- Fees, §17-19-111.
- Licensed agent, §17-19-110.
- Rules and regulations, §17-19-108.
- Subpoenas, §17-19-209.

Lists of bondsmen.

- Posting, §17-19-306.

Penalties for violation of provisions, §17-19-102.**Power of attorney to accompany application for license, §17-19-202.****Premiums.**

- Limitations, §17-19-301.

Professional bail bond company, §§17-19-102 to 17-19-104.**Prohibitions, §17-19-105.****Transfer of license, §17-19-202.****Unsecured bond.**

- Maximum amount, §17-19-304.

Violations.

- Hearing, §17-19-209.
- Investigation, §17-19-209.
- Penalties, §17-19-102.
- Venue for criminal or civil proceedings, §17-19-103.

BANKS AND FINANCIAL INSTITUTIONS.**Appraisers.**

- Absence of liability for actions of appraiser hired by institution, §17-14-106.

Immunity.

- Actions of appraiser hired by institution, §17-14-106.

BARBERS.**Appeals.**

- Certificate of registration.
 - Denial, suspension or revocation, §17-20-309.

Applications.

- Schools and colleges.
 - Certificate of registration.
 - Contents of application, §17-20-404.
 - Public welfare considerations, §17-20-403.
 - Examinations, §17-20-422.
 - Manager certification, §17-20-406.
 - Student enrollment, §17-20-420.

BARBERS —Cont'd**Barber technicians.****Certification.**

- Qualifications, §17-20-502.
- Employment by barbershop.
 - Certificate authorizing, §17-20-503.
 - Scope of employment, §17-20-501.
- Examination for certification, §17-20-502.

Fees.

- Certificate authorizing barbershop to employ, §17-20-503.

Qualifications, §17-20-502.**Scope of employment, §17-20-501.****Board of barber examiners.**

- Appointment of members, §17-20-201.
- Certificate of registration.
 - Issuance of duplicate certificates, §17-20-208.

Chairman.

- Election, §17-20-202.
- Compensation, §17-20-201.
- Composition, §17-20-201.
- Creation, §17-20-201.
- Employment of personnel, §17-20-204.
- Establishment, §17-20-201.
- Executive secretary, §17-20-203.
 - Bonds, surety, §17-20-203.
 - Powers and duties, §17-20-203.
- Expenses, §17-20-201.
- Fees, §17-20-208.
- Funds, §17-20-208.
 - Disposition, §17-20-209.
- Inspections, §17-20-206.
- Meetings, §17-20-205.
 - Purposes, §17-20-205.
 - Time and place, §17-20-205.
- Members, §17-20-201.
- Officers, §17-20-202.
- Personnel, §17-20-204.
- Quorum, §17-20-202.
- Removal of members, §17-20-201.
- Reports.

Annual reports, §17-20-207.**Rules and regulations, §17-20-206.****Schools and colleges.**

- Enforcement of subchapter, §17-20-402.

Seal of board, §17-20-202.**Terms of members, §17-20-201.****Vacancies, §17-20-201.****Bonds, surety.**

- Board of barber examiners.
 - Executive secretary, §17-20-203.

Certificate of registration.**Appeals.**

- Denial, suspension or revocation of certificate, §17-20-309.

BARBERS —Cont'd**Certificate of registration —Cont'd**

Applicants.

Qualifications, §17-20-302.

Applications, §17-20-303.

Schools and colleges.

Contents of application,
§17-20-404.Public welfare considerations,
§17-20-403.

Barber technician, §17-20-502.

Board of barber examiners.

Issuance of duplicate certificates,
§17-20-208.

Denial.

Appeal, §17-20-309.

Grounds, §17-20-308.

Display, §17-20-305.

Duplicate certificates.

Issuance, §17-20-208.

Examinations, §17-20-304.

Reexamination, §17-20-304.

Schools and colleges.

Qualifications of applicants for
examination, §17-20-421.

Expiration, §17-20-307.

Penalties.

Civil penalty for violations,
§17-20-310.Qualifications of applicants,
§17-20-302.

Renewal, §17-20-307.

Required, §17-20-301.

Restoration, §17-20-307.

Schools and colleges.

Applications.

Contents, §17-20-404.

Public welfare considerations,
§17-20-403.

Examinations.

Qualifications of applicants,
§17-20-421.Suspension or revocation,
§17-20-410.

Suspension or revocation.

Appeal, §17-20-309.

Grounds, §17-20-308.

Procedure, §17-20-309.

Schools and colleges, §17-20-410.

Citation of subchapter.

Short title, §17-20-101.

Cosmetology.Exemption from cosmetology
provisions, §17-26-103.**Definitions, §17-20-102.**

Schools and colleges, §17-20-401.

Equipment.

Schools and colleges, §17-20-408.

BARBERS —Cont'd**Examinations.**

Barber technicians.

Certification, §17-20-502.

Certificate of registration, §17-20-304.

Reexamination, §17-20-304.

Schools and colleges.

Application for examination,
§17-20-422.

Certificate of registration.

Qualifications of applicants for
examination, §17-20-421.**Exemptions from provisions,
§17-20-103.****Fees.**

Barber technicians.

Certificate authorizing barbershop to
employ, §17-20-503.Board of barber examiners,
§17-20-208.

Schools and colleges, §17-20-409.

Fines, §17-20-104.**Funds.**Board of barber examiners,
§17-20-208.

Disposition of funds, §17-20-209.

Inspections.Board of barber examiners,
§17-20-206.

Schools and colleges.

Student work, §17-20-424.

Licenses.

Schools and colleges.

Fees, §17-20-409.

Licensing prerequisites, §17-20-405.

Suspension or revocation of
certificate of license, §17-20-410.**Penalties, §17-20-104.**

Certificate of registration.

Civil penalty for violations,
§17-20-310.**Perjury, §17-20-104.****Practice of barbering.**

Prohibited acts, §17-20-301.

Registration.Certificate of registration, §§17-20-301
to 17-20-310.**Reports.**

Board of barber examiners.

Annual reports, §17-20-207.

Rules and regulations.Board of barber examiners,
§17-20-206.

Schools and colleges.

Sanitary rules and regulations,
§17-20-423.

BARBERS —Cont'd**Schools and colleges.**

Applications.

Certificate of registration.

Contents of application,
§17-20-404.Public welfare considerations,
§17-20-403.

Examinations, §17-20-422.

Manager certification, §17-20-406.

Student enrollment, §17-20-420.

Board of barber examiners.

Enforcement of subchapter,
§17-20-402.

Certificate of registration.

Applications.

Contents, §17-20-404.

Public welfare considerations,
§17-20-403.

Examinations.

Qualifications of applicants,
§17-20-421.Suspension or revocation,
§17-20-410.

Courses of study, §17-20-407.

Curriculum, §17-20-407.

Definition of "college," §17-20-401.

Enforcement of subchapter,
§17-20-402.

Equipment, §17-20-408.

Examinations.

Application for examination,
§17-20-422.

Certificate of registration.

Qualifications of applicants for
examination, §17-20-421.

Facility, §17-20-408.

Fees, §17-20-409.

Inspection of student work,
§17-20-424.

Licenses.

Fees, §17-20-409.

Prerequisites to licensing,
§17-20-405.Suspension or revocation of
certificate of license, §17-20-410.

Managers.

Certification, §17-20-406.

Licensing prerequisites, §17-20-405.

Sanitary rules and regulations,
§17-20-423.

Student enrollment.

Generally, §17-20-420.

Qualifications of applicants,
§17-20-421.

Student work.

Inspection, §17-20-424.

Subjects of study, §17-20-407.

BARBERS —Cont'd**Schools and colleges —Cont'd**

Teachers.

Licensing prerequisites, §17-20-405.

Seals and sealed instruments.

Board of barber examiners.

Seal of board, §17-20-202.

Technicians.

Barber technicians, §17-20-501.

Title of subchapter.

Short title, §17-20-101.

BEAUTY PAGEANTS.**Applicability of chapter.**

Exemptions, §17-21-104.

Bonds, surety, §17-21-202.

Exemptions, §17-21-203.

Cancellation.

Refund of fees, §17-21-204.

Definitions, §17-21-101.**Exemptions from chapter, §17-21-104.****Fees.**

Entry fees.

Refund if pageant cancelled,
§17-21-204.

Registration, §17-21-201.

Exemptions, §17-21-203.

Operators.

Registration.

Required, §17-21-201.

Penalties.

Violations of chapter, §17-21-102.

Registration.

Applications.

Contents, §17-21-201.

Denial, §17-21-205.

Expiration, §17-21-201.

Fees, §17-21-201.

Exemptions, §17-21-203.

Renewal, §17-21-201.

Suspension or revocation, §17-21-205.

Rules and regulations.

Adoption, §17-21-103.

Violations of chapter.

Penalties, §17-21-102.

BIDS AND BIDDING.**Contractors.**

Invitations to bid.

Information concerning necessity of
license to accompany,
§17-25-313.**BOARDS AND COMMISSIONS.****Abstracters' board, §§17-11-401 to
17-11-403.****Architects.**Board of architects, landscape
architects, and interior designers,
§§17-15-201 to 17-15-205.

BOARDS AND COMMISSIONS

—Cont'd

Athletic commission, §§17-22-201 to 17-22-208.**Bail bond company and bondsman licensing board**, §17-19-106.**Collection agencies.**Board of collection agencies,
§§17-24-201 to 17-24-203.**Contractors.**

Licensing board, §§17-25-201 to 17-25-206.

Counselors.Board of examiners in counseling,
§§17-27-201 to 17-27-203.**Electrical contractors and electricians.**Board of electrical examiners,
§§17-28-201 to 17-28-204.**Interior designers.**Board of architects, landscape architects, and interior designers,
§§17-15-201 to 17-15-205.**Landscape architects.**Board of architects, landscape architects, and interior designers,
§§17-15-201 to 17-15-205.**Professional bail bond company and professional bail bondsman licensing board**, §17-19-106.**BONDS, SURETY.****Abstracters**, §17-11-324.**Appraisal management company registration.**Applicants to post with the board,
§17-14-406.**Barbers.**Board of barber examiners.
Executive secretary, §17-20-203.**Beauty pageants**, §17-21-202.

Exemptions, §17-21-203.

Boxing.Matches and exhibitions.
Requirements for license,
§17-22-304.**Collection agencies.**Licensees, §17-24-306.
Nonresident agencies.
Deposit of security before filing
defensive pleading, §17-24-404.**Contractors.**Failure to execute bond.
Effect, §17-25-408.
Preliminary notice.
Filed with bond, §17-25-403.
Required, §17-25-404.**Precious metal buyers.**Licenses.
Nonresidents, §17-23-202.**BOXING AND WRESTLING.****Athletic commission**, §§17-22-201 to 17-22-208.

Appointment of members, §17-22-201.

Chairman, §17-22-202.

Liability of members and employees,
§17-22-205.

Powers, §17-22-204.

Secretary, §17-22-203.

Bonds, surety.

Matches and exhibitions.

Requirements for license,
§17-22-304.**Combative sports.**

Elimination contests, §17-22-208.

Regulation, §17-22-206.

Martial arts.Regulation, professional and
semi-professional, §17-22-206.**Matches and exhibitions.**

Authorized, §17-22-301.

Bond required for issuance of license,
§17-22-304.

Civic clubs.

Licenses, §17-22-302.

Combative sports elimination contests,
§17-22-208.

Liability.

Members and employees of
commission.

Personal liability, §17-22-205.

Licenses, §17-22-302.

Bond required, §17-22-304.

Civic clubs, §17-22-302.

Engaging in exhibition without
license.

Penalty, §17-22-303.

Fees, §17-22-302.

Refusal, §17-22-305.

Revocation, §17-22-305.

Restrictions, §17-22-301.

Sponsors.

Fees, §17-22-306.

Reports, §17-22-306.

Penalties.

Matches and exhibitions.

Engaging in without license,
§17-22-303.

Violation of provisions, §17-22-207.

Regulation of combative sports,
§17-22-206.**C****CEASE AND DESIST ORDERS.****Auctioneers and auction houses.**

Suspected violations, §17-17-115.

CEASE AND DESIST ORDERS

—Cont'd

Contractors, §17-25-409.**CERTIFIED APPRAISERS.****Generally**, §§17-14-101 to 17-14-308.**CHILD ABUSE AND NEGLECT.****Reports.**

Notice to licensees of online and web-based reporting program, §17-1-105.

CHILD SUPPORT.**Enforcement of support.**

Licensees.

Occupational, professional and business licensing.

Collection of personal information for purpose of child support enforcement, §17-1-104.

Professions and occupations.

Collection of personal information for purpose of child support enforcement, §17-1-104.

Licenses.

Occupational, professional and business licensing.

Collection of personal information for purpose of child support enforcement, §17-1-104.

Professions and occupations.

Collection of personal information for purpose of child support enforcement, §17-1-104.

CIRCUIT COURTS.**Auctions and auctioneers.**

Appellate jurisdiction, §17-17-407.

License fees.

Contribution to education and recovery fund, §17-17-404.

COLLECTION AGENCIES.**Accounts and accounting.**

Notice to client.

Annual accounting.

Renewal of license.

Condition for renewal, §17-24-304.

Requirement, §17-24-310.

Appeals.

Licensees.

Revocation, suspension or refusal, §17-24-308.

Applications.

Licensees, §17-24-303.

Attorneys.

Exemptions from chapter, §17-24-102.

Board of collection agencies.

Appointment of members, §17-24-201.

COLLECTION AGENCIES —Cont'd**Board of collection agencies** —Cont'd

Chairman and vice chairman.

Selection, §17-24-202.

Compensation, §17-24-201.

Composition, §17-24-201.

Creation, §17-24-201.

Establishment, §17-24-201.

Expenses paid, §17-24-201.

Meetings, §17-24-202.

Members, §17-24-201.

Qualifications of members, §17-24-201.

Quorum, §17-24-202.

Rules and regulations.

Authority to promulgate, §17-24-203.

Secretary.

Selection, §17-24-202.

Terms of members, §17-24-201.

Bonds, surety.

Licensees, §17-24-306.

Nonresident agencies.

Deposit of security before filing defense pleading, §17-24-404.

Charges, §17-24-309.

Limits, §17-24-309.

Defined, §17-24-101.**Exemptions from chapter**, §17-24-102.**Fair debt collection practices act**,

§§17-24-501 to 17-24-512.

Communication with consumers regarding collection of a debt, §17-24-504.

Deceptive forms, furnishing, §17-24-511.

Definitions, §17-24-502.

False or misleading representations, §17-24-506.

Fines and penalties, §17-24-512.

Harassment or abuse, §17-24-505.

Legal actions by debt collectors, §17-24-510.

Location information.

Acquisition, §17-24-503.

Defined, §17-24-502.

Multiple debts, §17-24-509.

Short title, §17-24-501.

Unfair practices, §17-24-507.

Validation of debts, §17-24-508.

Fees.

Collection charges, §17-24-309.

Limits, §17-24-309.

Licensees, §17-24-305.

Disposition of fees, §17-24-305.

Jurisdiction.

Nonresident collection agencies.

Long arm jurisdiction.

Generally, §17-24-401.

COLLECTION AGENCIES —Cont'd**Licenses.**

Appeals.

Revocation, suspension or refusal,
§17-24-308.

Applicants.

Qualifications, §17-24-302.

Applications, §17-24-303.

Bonds, surety, §17-24-306.

Branch office certificates.

Eligibility, §17-24-303.

Doing business.

Requirement of license, §17-24-301.

Expiration, §17-24-304.

Fees, §17-24-305.

Disposition of fees, §17-24-305.

Qualifications of applicants,
§17-24-302.

Refusal to issue license.

Appeals, §17-24-308.

Grounds, §17-24-307.

Procedure, §17-24-308.

Renewal, §17-24-304.

Annual notice to client of accounting
requirement.

Condition for renewal that
requirement be met,
§17-24-304.

Requirement of license, §17-24-301.

Restrictions as to qualifications of
applicants, §17-24-302.

Revocation or suspension.

Appeals, §17-24-308.

Failure to remit collected funds,
§17-24-104.

Grounds, §17-24-307.

Injunctive relief, §17-24-105.

Procedure, §17-24-308.

Remedies of board, §17-24-105.

Transferability, §17-24-303.

Nonresidents.

Service of process, §§17-24-401 to
17-24-404.

Notice.

Accounting to client.

Annual notice.

Renewal of license.

Conditions of renewal,
§17-24-304.

Requirement, §17-24-310.

Penalties.

Violations of provisions, §17-24-103.

Remission of collected funds.

Failure to remit.

Effect, §17-24-104.

Rules and regulations.

Board of collection agencies.

Authority to promulgate, §17-24-203.

COLLECTION AGENCIES —Cont'd**Service of process.**

Nonresident collection agencies.

Jurisdiction.

Long arm jurisdiction, §17-24-401.

Long arm jurisdiction, §17-24-401.

Motion to quash writ or set aside
nonresident service not barred,
§17-24-402.

Secretary of state, service on,
§§17-24-401, 17-24-403.

Security by nonresident agencies
before filing defensive pleading,
§17-24-404.

Postponement for agency to give
security, §17-24-404.

Secretary of state, service on.

Authorized, §17-24-401.

Procedure, §17-24-403.

Transfers.

Licenses, §17-24-303.

COMBATIVE SPORTS.

Elimination contests, §17-22-208.

Martial arts.

Regulation, professional and
semi-professional, §17-22-206.

Regulation, §17-22-206.

**CONFIDENTIALITY OF
INFORMATION.****Alcoholism and drug abuse
counselors.**

Exception, §17-27-416.

Contractors.

Licenses.

Applications.

Financial statement to
accompany.

Confidentiality and disposition
of statement, §17-25-304.

CONTINGENT FEES.

Accountants, §17-12-106.

CONTINUING EDUCATION.**Accountants.**

License renewal requirements,
§17-12-502.

Auctioneers.

License renewal, §17-17-311.

Cosmetology instructors, §§17-26-319,
17-26-410.

**Electrical contractors and
electricians.**

License renewal, §17-28-311.

CONTRACTORS.**Administration of provisions.**

Expenses, §17-25-402.

CONTRACTORS —Cont'd**Appeals.**

Decisions of licensing board,
§17-25-312.

Applications.

Licenses, §17-25-303.

Bidding.

Invitations to bid.

Information concerning necessity of
license to accompany,
§17-25-313.

Board of licensing, §§17-25-201 to
17-25-206.

Bonds, surety.

Cancellation.

Notice, §17-25-406.

Enforcement, §17-25-408.

Failure to execute bond.

Effect, §17-25-408.

Filing, §17-25-404.

Liability of customer, §17-25-403.

Preliminary notice.

Filed with bond, §17-25-403.

Required, §17-25-404.

Terms, §17-25-404.

Confidentiality of information.

Licenses.

Applications.

Financial statement to
accompany.

Confidentiality and disposition
of statement, §17-25-304.

Corporations.

Engaging in business of contracting,
§17-25-311.

Definitions, §17-25-101.**Electrical contractors and**

electricians, §§17-28-101 to
17-28-311.

Emergency work, §17-25-403.**Evidence.**

Licenses.

Certificate of license, §17-25-301.

Examinations.

Licenses, §17-25-306.

Reexaminations, §17-25-306.

Exemptions from chapter, §17-25-102.**Expenses.**

Administration of provisions,
§17-25-402.

Failure to comply with provisions.

Revocation of license, §17-25-408.

Federal aid.

Qualifications of contractors.

Contracts with state agencies or
political subdivisions involving
federal aid funds, §17-25-315.

CONTRACTORS —Cont'd**Fees.**

Licenses.

Applications for licenses, §17-25-303.

Reexaminations, §17-25-306.

Renewal of license, §17-25-303.

Fines, §17-25-103.**Funds.**

Disposition of funds, §17-25-205.

Indictments.

Violations of provisions.

Sufficiency of indictment,
§17-25-105.

Injunctions.

Unlawful practice, §17-25-104.

Licenses.

Applications, §17-25-303.

Financial statement to accompany,
§17-25-304.

Qualifications of applicants,
§17-25-305.

Board of licensing, §§17-25-201 to
17-25-206.

Evidentiary effect of certificate of
license, §17-25-301.

Examinations, §17-25-306.

Reexaminations, §17-25-306.

Expiration, §17-25-307.

Fees.

Applications for licenses, §17-25-303.

Reexaminations, §17-25-306.

Renewal of license, §17-25-303.

Invitations to bid.

Information concerning necessity of
license to accompany,
§17-25-313.

Issuance, §17-25-306.

Limitations, §17-25-302.

Lost, destroyed or mutilated
certificates.

Replacement, §17-25-310.

Notice.

Revocation or reissuance of license,
§17-25-309.

Qualifications of applicants,
§17-25-305.

Renewal.

Fees, §17-25-303.

Replacement of lost, destroyed or
mutilated certificate, §17-25-310.

Residential building contractors
committee, §§17-25-505 to
17-25-514.

Revocation.

Grounds, §§17-25-103, 17-25-308.

Procedure, §17-25-309.

Reissuance of revoked license,
§17-25-309.

CONTRACTORS —Cont'd**Licenses —Cont'd**

Revocation —Cont'd

Workers' compensation coverage,
failure to maintain, §17-25-514.

Licensing board.

Administrator.

Employment, §17-25-204.

Appeals.

Decisions of board, §17-25-312.

Appointment of members, §17-25-201.

Chairman and vice chairman.

Election, §17-25-202.

Chief administrative employee,
§17-25-204.

Compensation, §17-25-201.

Composition, §17-25-201.

Creation, §17-25-201.

Election of officers, §17-25-202.

Employees, §17-25-204.

Expenses paid, §17-25-201.

Fees.

Deposit, §17-25-205.

Limitations on licenses.

Power of board, §17-25-302.

Meetings, §17-25-202.

Members, §17-25-201.

Notice.

Meetings, §17-25-202.

Oath of office, §17-25-201.

Officers, §17-25-202.

Penalties.

Powers generally, §17-25-103.

Powers.

Enumerated, §17-25-203.

Generally, §17-25-203.

Qualifications of members, §17-25-201.

Administrator, §17-25-204.

Quorum, §17-25-202.

Records, §17-25-206.

Reports, §17-25-206.

Rules and regulations, §17-25-315.

Seal of board, §17-25-202.

Secretary.

Election, §17-25-202.

Records and reports.

Duties, §17-25-206.

Terms of members, §17-25-201.

Chairman and vice chairman,
§17-25-202.

Secretary, §17-25-202.

Manufacturers producing equipment with responsibility for installation.

Exemption from chapter, §17-25-102.

Materials purchased by.

When not considered part of
subcontractor's project,
§17-25-101.

CONTRACTORS —Cont'd**Notice.**

Completion of contract, §17-25-406.

Failure to give notice.

Effect, §17-25-408.

Licenses.

Revocation or reissuance,
§17-25-309.

Licensing board.

Meetings, §17-25-202.

Preliminary notice.

Filed with bond, §17-25-403.

Oaths.

Licensing board.

Oath of office, §17-25-201.

Partnerships.

Engaging in business of contracting,
§17-25-311.

Penalties, §17-25-103.

Prohibited acts, §17-25-104.

Records.

Licensing board, §17-25-206.

Reports.

Licensing board, §17-25-206.

Residential building contractors committee, §§17-25-501 to 17-25-514.

Appeal from decisions of committee,
§17-25-511.

Definitions, §17-25-502.

License issuance.

Applications, §17-25-506.

Committee as licensing entity,
§17-25-505.

Examination, §17-25-509.

Expiration, §17-25-512.

Fees, §17-25-512.

Name contractor licensed under,
§17-25-508.

Qualifications, §17-25-507.

Workers' compensation coverage,
§17-25-514.

Members, §17-25-503.

Personal homebuilder exemption,
§§17-25-509, 17-25-513.

Powers, §17-25-504.

Purpose of committee, §17-25-501.

Terms of members, §17-25-503.

Vacancies, §17-25-503.

Violations, hearings, §17-25-510.

Rules and regulations.

Licensing board, §17-25-315.

Seals and sealed instruments.

Licensing board.

Seal of board, §17-25-202.

Unlawful practice.

Injunction, §17-25-104.

Penalty, §17-25-104.

CONTRACTORS —Cont'd**Violations of provisions.**

Cease and desist orders, §17-25-409.

Indictments.

Sufficiency, §17-25-105.

Limitation of actions, §17-25-409.

Penalties, §§17-25-103, 17-25-104,
17-25-408.

Proceedings upon violation,
§17-25-409.

Workers' compensation.

Coverage required, §17-25-316.

Residential building contractors.

Licensure requirements, §17-25-514.

CONTRACTS.**Auctions and auctioneers.**

Contract with seller required,
§17-17-112.

COPIES.**Cosmetology.**

Licenses, §17-26-318.

CORPORATIONS.**Appraiser's registration, license or
certificate not issued to,
§17-14-301.****Architects.**

Registration and licensing, §17-15-303.

Fee, §17-15-311.

Contractors.

Engaging in business of contracting,
§17-25-311.

COSMETOLOGISTS.**Advertising.**

False of deceptive statements.

Grounds for disciplinary action,
§17-26-105.

Applications.

Examinations, §17-26-302.

Licenses, §17-26-302.

Schools and establishments,
§§17-26-402, 17-26-403.

Barbers.

Exemption from cosmetology
provisions, §17-26-103.

Certificate of registration.

Cosmetologists, manicurists and
aestheticians.

Examinations.

Generally, §17-26-309.

Prerequisites, §17-26-304.

Reexaminations.

Eligibility, §17-26-311.

Electrologists.

Examinations.

Prerequisites, §17-26-306.

Reexaminations.

Eligibility, §17-26-311.

COSMETOLOGISTS —Cont'd**Certificate of registration —Cont'd**

Electrology instructors.

Examinations.

Prerequisites, §17-26-307.

Issuance of certificate, §17-26-312.

Reciprocity, §17-26-315.

Specificity of certificate, §17-26-314.

Citation of chapter.

Title, §17-26-101.

Copies.

Licenses, §17-26-318.

**Cosmetologists, manicurists and
aestheticians.**

Examinations.

Generally, §17-26-309.

Prerequisites to examination,
§17-26-304.

Reexaminations.

Eligibility, §17-26-311.

**Cosmetology technical advisory
committee, §17-26-201.**

Hearings, §17-26-208.

Definitions, §17-26-102.**Dentists.**

Exemption from cosmetology
provisions, §17-26-103.

Drugs.

Habitual addiction.

Grounds for disciplinary action,
§17-26-105.

Drunkenness.

Grounds for disciplinary action,
§17-26-105.

Electrologists.

Defined, §17-26-102.

Examinations.

Prerequisites to examination,
§17-26-306.

Reexaminations.

Eligibility, §17-26-311.

Electrology.

Schools and establishments.

Courses of study, §17-26-413.

Electrology instructors.

Examinations.

Prerequisites to examination,
§17-26-307.

Examinations.

Applications, §17-26-302.

Cosmetologists, manicurists and
aestheticians.

Certificate of registration,
§17-26-309.

Prerequisites to examination,
§17-26-304.

Reexaminations.

Eligibility, §17-26-311.

COSMETOLOGISTS —Cont'd**Examinations —Cont'd**

- Duties of health department,
§17-26-205.
- Electrologists.
Prerequisites to examination,
§17-26-306.
- Reexaminations.
Eligibility, §17-26-311.
- Electrology instructors.
Prerequisites to examination,
§17-26-307.
- Failure to appear, rules regarding,
§17-26-310.
- Health department, administration of
licensing exams, §17-26-206.
- Licenses generally, §17-26-303.

**Exceptions from provisions,
§17-26-103.****Fees, §17-26-209.**

- Contingent fund.
Crediting to, §17-26-210.
- Transfers to fund for operating
expenses, §17-26-210.
- Schools and establishments.
Licensing fee, §17-26-402.

Health department.

- Duties, §17-26-205.
- Enforcement of provisions, §17-26-205.
- Examinations, administration,
§17-26-206.
- Inspections, conducting, §17-26-208.
- Inspectors, authority to employ,
§17-26-204.
- Investigations, §17-26-208.
- Registration records, §17-26-207.
- Rules and regulations, §17-26-205.

Hearings.

- Cosmetology technical advisory
committee, §17-26-208.

Inspections.

- Conduct by health department,
§17-26-208.
- School facilities, §17-26-407.

Inspectors.

- Employment by health department,
§17-26-204.

Investigations.

- Health department, §17-26-208.

Licenses, §17-26-402.

- Applications, §17-26-302.
- Schools and establishments,
§§17-26-402, 17-26-403.
- Cosmetologists, manicurists and
aestheticians.
Examinations.
Generally, §17-26-309.

COSMETOLOGISTS —Cont'd**Licenses —Cont'd**

- Cosmetologists, manicurists and
aestheticians —Cont'd
- Examinations —Cont'd
- Reexaminations, §17-26-311.
- Eligibility, §17-26-304.
- Issuance of license, §17-26-312.
- Discipline for unlawful practices,
§17-26-104.
- Display of license, §17-26-316.
- Failure to display.
Grounds for disciplinary action,
§17-26-105.
- Duplicates, §17-26-318.
- Electrologists.
Examinations.
Prerequisites, §17-26-306.
- Reexaminations, §17-26-311.
- Eligibility, §17-26-306.
- Electrology instructors.
Examinations.
Prerequisites, §17-26-307.
- Expiration, §17-26-319.
- Issuance of license, §17-26-312.
- Refusal to issue.
School licenses, §17-26-406.
- Reciprocity, §17-26-315.
- Refusal to issue license.
School licenses, §17-26-406.
- Reinstatement, §§17-26-319,
17-26-321.
- Reissuance, §17-26-321.
- Renewal, §17-26-319.
- Schools and establishments.
Cancellation of license, §17-26-406.
- Cosmetological establishments.
Generally, §17-26-402.
- Expiration of license, §17-26-404.
- Refusal to issue license, §17-26-406.
- Renewal of license, §17-26-404.
- Requirements, §17-26-401.
- School of cosmetology generally,
§17-26-403.
- Specificity of license, §17-26-314.
- Suspension or revocation.
Grounds for disciplinary action,
§17-26-105.
- School licenses.
Cancellation, §17-26-406.
- Unlawful practices, §17-26-104.
- Malpractice.**
Gross malpractice as grounds for
disciplinary action, §17-26-105.
- Manager-operator.**
Defined, §17-26-102.
- Notice.**
Change of address, §17-26-317.

COSMETOLOGISTS —Cont'd**Penalties.**

Violations of act or rules and regulations, §17-26-104.

Physicians and surgeons.

Exemption from cosmetology provisions, §17-26-103.

Practice of cosmetology.

Exceptions to provisions, §17-26-103.

Reciprocity, §17-26-315.**Records.**

Health department.

Registration records, §17-26-207.

Rules and regulations.

Department of health, §17-26-205.

Violations.

Penalties, §17-26-104.

Schools and establishments.

Applications.

Licenses, §§17-26-402, 17-26-403.

Courses of study.

Cosmetology courses in public schools, §17-26-418.

Electrology course, §17-26-413.

Generally, §17-26-412.

Registration of students, §17-26-415.

Special programs, §17-26-414.

Student registration, §17-26-415.

Reregistration on transfer, §17-26-415.

Duties of school.

Generally, §17-26-408.

Electrology course, §17-26-413.

Facilities.

Inspection, §17-26-407.

Prohibition on use, §17-26-405.

Inspection of school facilities, §17-26-407.

Instructors.

Continuing education.

Requirements, §§17-26-319, 17-26-410.

Duties.

Generally, §17-26-411.

Qualifications, §17-26-410.

Licenses.

Cancellation of license, §17-26-406.

Expiration, §17-26-404.

Fee, §17-26-402.

Refusal to issue license, §17-26-406.

Renewal, §17-26-404.

Requirements, §17-26-401.

School of cosmetology generally, §17-26-403.

Prohibitions.

Use of facilities, §17-26-405.

Students.

Definitions, §17-26-102.

COSMETOLOGISTS —Cont'd**Schools and establishments —Cont'd**

Students —Cont'd

Registration, §17-26-415.

Student work, §17-26-417.

Transfers.

Reregistration on transfer, §17-26-415.

Volunteering at charity events, §17-26-417.

Supervisor of school.

Generally, §17-26-409.

Terms, §17-26-412.

Title of chapter, §17-26-101.

Year.

Defined, §17-26-102.

COSTS.**Counselors.**

Unlicensed practice, §17-27-104.

COUNSELORS.**Alcoholism and drug abuse,**

§§17-27-401 to 17-27-416.

Board of examiners in counseling.

Appointment of members, §17-27-201.

Chairman.

Election, §17-27-202.

Composition, §17-27-201.

Creation, §17-27-201.

Duties.

Generally, §17-27-203.

Establishment, §17-27-201.

Meetings, §17-27-202.

Members, §17-27-201.

Officers, §17-27-202.

Powers.

Generally, §17-27-203.

Quorum, §17-27-202.

Removal of members, §17-27-201.

Seal of board, §17-27-202.

Secretary.

Election, §17-27-202.

Terms of members, §17-27-201.

Officers, §17-27-202.

Vacancies, §17-27-201.

Construction and interpretation.

Exemptions from chapter, §17-27-103.

Criminal background checks.

Applicants for license, §17-27-313.

Definitions, §17-27-102.**Education.**

Qualifications for licenses,

§§17-27-301, 17-27-302.

Examinations.

Licenses, §17-27-306.

Waiver under special conditions, §17-27-308.

Exemptions from chapter, §17-27-103.

COUNSELORS —Cont'd**Fees.**

Licenses, §17-27-310.

Fines, §17-27-104.**Injunctions.**

Unlicensed practice, §17-27-105.

Legislative declaration, §17-27-101.**Licenses.**

Criminal background checks of applicants, §17-27-313.

Examinations, §17-27-306.

Waiver under special conditions, §17-27-308.

Fees, §17-27-310.

Marriage and family therapists.

Associate marriage and family therapists, §17-27-305.

Qualifications, §§17-27-303, 17-27-304.

Practice of counseling.

Unlicensed practice prohibited, §17-27-104.

Injunctions, §17-27-105.

Qualifications.

Licensed associate counselor, §17-27-302.

Licensed professional counselor, §17-27-301.

Removal of disqualification for adjudication of violations, §17-1-103.

Renewal, §17-27-307.

Special conditions, §17-27-308.

Suspension or revocation, §17-27-309.

Marriage and family therapists.

Applicability of laws pertaining to licensed professional counselors, §17-27-312.

Licenses.

Qualifications, §§17-27-303, 17-27-304.

Associate marriage and family therapists, §17-27-305.

Penalties, §17-27-104.**Policy of state, §17-27-101.****Practice of counseling.**

Defined, §17-27-102.

Licenses.

Unlicensed practice prohibited, §17-27-104.

Injunctions, §17-27-105.

Privileged communications,

§17-27-311.

Prohibitions, §17-27-104.**Seals and sealed instruments.**

Board of examiners in counseling.

Seal of board, §17-27-202.

COUNTIES.**Electrical contractors and electricians.**

Local regulatory authority, §17-28-305.

CRIMINAL HISTORY RECORD CHECKS.**Accountants.**

Certified public accountants, §17-12-303.

Auctions and auctioneers.

Licenses, §17-17-312.

Bail bondsmen, §17-19-203.**Certified public accountants,**

§17-12-303.

Counselors.

License applicants.

Criminal background checks, §17-27-313.

CRIMINAL LAW AND PROCEDURE.**Abstracters.**

Falsification of public record or information, §17-11-103.

Licensing violations, §17-11-103.

Accountants, §17-12-104.**Appraisal management company registration.**

Violations, §17-14-411.

Architects, §17-15-103.**Athletic agents.**

Prohibited conduct, §17-16-115.

Auctioneer licensing.

Nonresidents, §17-17-304.

Unlicensed practice, §17-17-105.

Bail bondsmen, §17-19-102.

Falsely representing completion of continuing education requirements, §17-19-102.

Barbers, barber shops, barber corporations or barber schools or colleges, §17-20-104.**Beauty pageant operators,**

§17-21-102.

Boxing without license, §17-22-303.**Collection agencies, §17-24-103.****Contractors and subcontractors,**

§17-25-103.

Counselors practicing without license, §17-27-104.**Electrical contractors and electricians.**

Performing electrical work without exemption or license, §17-28-309.

Licensing criminal offenders,

§17-1-103.

Martial arts, unlicensed activity,

§17-22-303.

Precious metals buyers, §17-23-103.

CRIMINAL LAW AND PROCEDURE

—Cont'd

Wrestling without license, §17-22-303.**D****DAMAGES.****Appraisals and appraisers.**Psychologically impacted property,
§17-10-101.**Athletic agents.**Educational institution's right of
action.Athletic agents or student-athlete's
violation, §17-16-116.**Collection agencies.**Fair debt collection practices act,
violations, §17-24-512.**Counselors.**

Unlicensed practice, §17-27-104.

Precious metal buyers.

Violations of provisions, §17-23-104.

**Real estate brokers and
salespersons.**Psychologically impacted property,
§17-10-101.**DEBT COLLECTORS, §§17-24-101 to
17-24-404.****DEBTS.****Collectors, §§17-24-101 to 17-24-404.****DECEDENTS' ESTATES.****Accountants.**Payments for practice or retirement,
§17-12-106.**DEFINED TERMS.****Abstract of title.**

Abstracters, §17-11-102.

Abstract plant.

Abstracters, §17-11-102.

Aesthetician.

Occupations, §17-26-102.

Agency contract.

Athletic agents, §17-16-102.

Agent.Psychologically impacted property,
§17-10-101.**AICPA.**

Accountants, §17-12-103.

**Air conditioning electrician,
§17-28-101.****Amateur.**

Athletic commission, §17-22-101.

Appraisal.

Appraisers, §17-14-103.

Appraisal activities.

Counselors, §17-27-102.

DEFINED TERMS —Cont'd**Appraisal foundation.**

Appraisers, §17-14-103.

Appraisal management company.Appraisal management company
registration, §17-14-402.**Appraisal management services.**Appraisal management company
registration, §17-14-402.**Appraisal practice.**

Appraisers, §17-14-103.

Appraisal services.Appraisal management company
registration, §17-14-402.

Appraisers, §17-14-103.

Appraisal standards board.

Appraisers, §17-14-103.

Appraisal subcommittee.

Appraisers, §17-14-103.

Appraiser, §17-14-103.Appraisal management company
registration, §17-14-402.Psychologically impacted property,
§17-10-101.**Appraiser panel.**Appraisal management company
registration, §17-14-402.**Appraiser qualifications board.**

Appraisers, §17-14-103.

Architect.

Professions, §17-15-102.

Athletic agent, §17-16-102.**Athletic director.**

Athletic agent, §17-16-102.

Attest.

Accountants, §17-12-103.

Auctioneer.

Professions, §17-17-103.

Bail bond or appearance bond.

Bail bondsman, §17-19-101.

Barbering.

Professions, §17-20-102.

Barber pole.

Barber, §17-20-102.

Beauty pageant, §17-21-101.**Beneficial owner.**

Accountants, §17-12-103.

Boxing.

Athletic commission, §17-22-101.

Broker's price opinion.

Appraisers, §17-14-103.

Business of abstracting.

Abstracters, §17-11-102.

Certificate.

Accountants, §17-12-103.

Certificate of authority.

Abstracters, §17-11-102.

DEFINED TERMS —Cont'd**Client.**

Appraisal management company registration, §17-14-402.

Appraisers, §17-14-103.

Collection agency.

Businesses, §17-24-101.

Combative sports.

Athletic commission, §17-22-101.

Committee.

Residential building contractors committee, §17-25-502.

Communication.

Fair debt collection practices act, §17-24-502.

Compilation.

Accountants, §17-12-103.

Consulting.

Counselors, §17-27-102.

Consumer.

Fair debt collection practices act, §17-24-502.

Communication with consumers regarding collection of debt, §17-24-504.

Contract.

Athletic agent, §17-16-102.

Contractor, §17-25-401.

Occupations, §§17-25-101, 17-25-401.

Controlling person.

Appraisal management company registration, §17-14-402.

Conviction.

Accountants, §17-12-103.

Cosmetological establishment.

Businesses, §17-26-102.

Cosmetologist.

Occupations, §17-26-102.

Counseling.

Counselors, §17-27-102.

Counseling services.

Counselors, §17-27-102.

Creditor.

Fair debt collection practices act, §17-24-502.

Debt.

Fair debt collection practices act, §17-24-502.

Debt collector.

Fair debt collection practices act, §17-24-502.

Direct supervision.

Architects, §17-15-102.

Electrical apprentice, §17-28-101.**Electrical contractor.**

Electricians, §17-28-101.

Electrical work, §17-28-101.**DEFINED TERMS —Cont'd****Electrologist.**

Occupations, §17-26-102.

Emergency.

Architects, practice with national or out-of-state certification, §17-15-312.

Endorsement contract.

Athletic agent, §17-16-102.

Entrant's fee.

Beauty pageants, §17-21-101.

Exhibit or exhibition.

Athletic commission, §17-22-101.

Federal financial institutions regulatory agencies.

Appraisers, §17-14-103.

Federally related transaction.

Appraisers, §17-14-103.

Financial institution.

Appraisers, §17-14-103.

Firm.

Accountants, §17-12-103.

Foundation.

Appraisers, §17-14-103.

Good moral character.

Accountants, §17-12-301.

Architects, §17-15-102.

Goods.

Auctioneers, §17-17-103.

Independent appraisal assignment, §17-14-103.**Industrial maintenance electrician.**

Occupations, §17-28-101.

Industry.

Electrical contractors and electricians, §17-28-102.

Insurer.

Bail bondsman, §17-19-101.

Intercollegiate sport.

Athletic agent, §17-16-102.

Journeyman electrician.

Occupations, §17-28-101.

Kick boxing.

Athletic commission, §17-22-101.

License.

Accountants, §17-12-103.

Licensed alcohol and drug abuse counselor, §17-27-401.**Licensed associate counselor.**

Occupations, §17-27-102.

Licensed associate marriage and family therapist, §17-27-102.**Licensed marriage and family therapist,** §17-27-102.**Licensed professional counselor.**

Occupations, §17-27-102.

Licensee.

Accountants, §17-12-103.

DEFINED TERMS —Cont'd**Licensee —Cont'd**

Bail bondsman, §17-19-101.

Psychologically impacted property,
§17-10-101.**Livestock auction barn.**

Auctioneers, §17-17-103.

Livestock auction barn auctioneer.

Professions, §17-17-103.

Location information.Fair debt collection practices act,
§17-24-502.**Manager.**

Athletic commission, §17-22-101.

Manager-operator.

Cosmetology, §17-26-102.

Managing principal.Appraisal management company
registration, §17-14-402.**Market analysis.**

Appraisers, §17-14-103.

Marriage and family therapy,

§17-27-102.

Martial arts.

Athletic commission, §17-22-101.

Master electrician.

Occupations, §17-28-101.

Match.

Athletic commission, §17-22-101.

Member.

Accountants, §17-12-103.

Mixed martial arts.

Athletic commission, §17-22-101.

NASBA.

Accountants, §17-12-103.

Operator.

Beauty pageants, §17-21-101.

PCAOB.

Accountants, §17-12-103.

Person.Appraisal management company
registration, §17-14-402.

Athletic agent, §17-16-102.

Athletic commission, §17-22-101.

Auctioneers, §17-17-103.

Precious metals buyers, §17-23-101.

Personal property.

Appraisers, §17-14-103.

**Practice of alcoholism and drug
abuse counseling, §17-27-401.****Practice of architecture.**

Architects, §17-15-102.

Practice of public accounting.

Accountants, §17-12-103.

Practice unit.

Accountants, §17-12-507.

Primary residence.Electrical contractors and electricians,
§17-28-101.**DEFINED TERMS —Cont'd****Professional.**

Athletic commission, §17-22-101.

Professional bail bond company,
§17-19-101.**Professional bail bondsman,**
§17-19-101.**Professional service.**

Accountants, §17-12-103.

**Professional-sports services
contract.**

Athletic agent, §17-16-102.

Promoter.

Athletic commission, §17-22-101.

Psychologically impacted.

Residential real estate, §17-10-101.

Real estate.

Appraisers, §17-14-103.

Real estate appraisal.

Appraisers, §17-14-103.

Real estate fee appraiser.

Appraisers, §17-14-103.

**Real estate related financial
transaction.**

Appraisers, §17-14-103.

Real property.

Appraisers, §17-14-103.

Record.

Athletic agent, §17-16-102.

Referral activities.

Counselors, §17-27-102.

Registered abstracter.

Professions, §17-11-102.

Registered architect.

Professions, §17-15-102.

Registered clinical supervisor.Alcoholism and drug abuse counselors,
§17-27-401.**Registrant.**Appraisal management company
registration, §17-14-402.**Registration.**

Architects, §17-15-102.

Athletic agent, §17-16-102.

Report.

Appraisers, §17-14-103.

Research activities.

Counselors, §17-27-102.

Residential building contractor,
§17-25-502.**Residential journeyman electrician,**
§17-28-101.**Residential master electrician,**
§17-28-101.**Review.**

Appraisers, §17-14-103.

Shareholder.

Accountants, §17-12-103.

DEFINED TERMS —Cont'd**Silver.**

Precious metals buyers, §17-23-101.

Single family residence.

Residential building contractors committee, §17-25-502.

Specialist sign electrician.

Electrical contractors and electricians, §17-28-101.

State.

Accountants, §17-12-103.

Athletic agent, §17-16-102.

State-certified appraiser, §17-14-103.**State certified residential appraiser.**

Occupations, §17-14-103.

State-licensed appraiser, §17-14-103.**State-registered appraiser,**

§17-14-103.

Student.

Cosmetology, §17-26-102.

Student-athlete.

Athletic agent, §17-16-102.

Supervised work experience.

Alcoholism and drug abuse counselors, §17-27-401.

Technical submissions.

Architects, §17-15-102.

Transferee.

Psychologically impacted property, §17-10-101.

Uniform standards of professional appraisal practice.

Appraisers, §17-14-103.

Wrestling.

Athletic commission, §17-22-101.

Written appraisal.

Appraisers, §17-14-103.

DENTISTS AND DENTISTRY.**Cosmetology.**

Exemption from cosmetology provisions, §17-26-103.

DRIVERS' LICENSES.**Applications.**

Information to appear on, for child support enforcement purposes, §17-1-104.

DRUGS AND CONTROLLED SUBSTANCES.**Cosmetology.**

Habitual addiction.

Grounds for disciplinary action, §17-26-105.

E**ELECTRICAL CONTRACTORS AND ELECTRICIANS.****Board of electrical examiners.**

Administrative procedure act.

Applicability to hearings and appeals, §17-28-204.

Appointment of members, §17-28-201.

Chairman, §17-28-201.

Compensation, §17-28-201.

Composition, §17-28-201.

Creation, §17-28-201.

Duties, §17-28-202.

Establishment, §17-28-201.

Examinations.

Authority to conduct, §17-28-203.

Expenses paid, §17-28-201.

Members, §17-28-201.

Removal of members, §17-28-201.

Rules and regulations, §17-28-202.

Terms of members, §17-28-201.

Vacancies, §17-28-201.

Construction and interpretation,

§17-28-102.

Continuing education, §17-28-311.**Counties.**

Local regulatory authority, §17-28-305.

Definitions, §17-28-101.**Electrical apprentices, §17-28-308.****Examinations.**

Board of electrical examiners.

Authority to conduct, §17-28-203.

Licenses, §17-28-203.

Duties of board of electrical examiners, §17-28-202.

Fees, §17-28-203.

Exemptions from provisions,

§17-28-102.

Fees.

Disposition of funds received, §17-28-103.

Licenses, §17-28-301.

Electrical contractors, §17-28-302.

Examinations, §17-28-203.

Renewal, §17-28-301.

Injunctions.

Performance of electrical without exemption or license, §17-28-309.

Licenses.

Electrical contractors, §17-28-302.

Examinations, §17-28-203.

Duties of board of electrical examiners, §17-28-202.

ELECTRICAL CONTRACTORS AND ELECTRICIANS —Cont'd

Licenses —Cont'd

Examinations —Cont'd

Fees, §17-28-203.

Expiration, §17-28-301.

Grandfather clause, §17-28-310.

Local regulatory authority, §17-28-305.

Performing electrical work without exemption or license.

Penalties, §17-28-309.

Reciprocity, §17-28-306.

Renewal, §17-28-301.

Failure to renew license, §17-28-301.

Fees, §17-28-301.

Requirements, §17-28-304.

Restricted lifetime master electrician license, §17-28-307.

Transfer.

Prohibited, §17-28-303.

Local regulatory authority,
§17-28-305.

Municipal corporations.

Local regulatory authority, §17-28-305.

Penalties.

Licenses.

Failure to renew license, §17-28-301.

Reciprocity.

Licenses, §17-28-306.

Rules and regulations.

Board of electrical examiners,
§17-28-202.

ELECTRONIC TRANSACTIONS.

Athlete agents.

Agency contracts, §17-16-119.

ENGINEERS.

Architects, §17-15-205.

Licensing provision applicability,
§17-15-102.

EVIDENCE.

Abstracters.

Abstract as evidence, §17-11-343.

Accountants.

Judicial notice.

Seal of state board of public
accountancy, §17-12-202.

Prima facie evidence of holding oneself
out to be public accountant,
§17-12-111.

Revocation or suspension of license or
certificate.

Submission of evidence to board,
§17-12-603.

Contractors.

Licenses.

Certificate of license, §17-25-301.

EXAMINATIONS.

Architects.

Registration and licensing, §17-15-304.

Contractors.

Licenses, §17-25-306.

Counselors.

Licenses, §17-27-306.

Waiver under special conditions,
§17-27-308.

Veterans.

Licenses and permits.

Ten percent credit, §17-1-101.

Examining board to receive
certified copy of honorable
discharge, §17-1-101.

F

FAIR DEBT COLLECTION

PRACTICES ACT, §§17-24-501 to
17-24-512.

FEDERAL AID.

Contractors.

Qualifications of contractors.

Contracts with state agencies or
political subdivision involving
federal aid funds, §17-25-315.

FEES.

Agricultural consultants.

Licenses.

Disposition of fees, §17-13-110.

Plant board to establish fees,
§17-13-106.

Appraisals and appraisers.

Application fee for registering,
licensing or certifying, §17-14-203.

Examination fee for registering,
licensing or certifying, §17-14-203.

Architects.

Registration and licensing, §17-15-311.

Athletic agents.

Certificate of registration, §17-16-109.

Bail bondsmen, §17-19-111.

Licenses, §17-19-202.

Beauty pageants.

Entrance fees.

Refund upon cancellation,
§17-21-204.

Exemptions, §17-21-203.

Registration, §17-21-201.

Collection agencies.

Licenses, §17-24-305.

Cosmetology, §17-26-209.

Counselors.

Licenses, §17-27-310.

FEES —Cont'd**Electrical contractors and electricians.**Disposition of funds received,
§17-28-103.

Licenses, §17-28-301.

Electrical contractors, §17-28-302.

Examinations, §17-28-203.

Renewal, §17-28-301.

Precious metal buyers.

Deposit of fees, §17-23-208.

Licenses, §17-23-202.

FINES.**Abstracter's licensing violations,**
§17-11-103.**Accountants,** §17-12-104.**Agricultural consultants.**Holding self out as consultant without
license, §17-13-105.**Appraisal management company
registration.**

Violations, §17-14-410.

Architects, §17-15-203.**Athlete agents.**

Administrative penalties, §17-16-117.

Auctioneers, §17-17-114.

Grounds, §17-17-308.

Unlicensed practice, §17-17-105.

**Barbers, barber shops, barber
corporations or barber schools
or colleges,** §17-20-104.**Beauty pageant operators,**
§17-21-102.**Boxing without license,** §17-22-303.**Boxing, wrestling or martial arts.**

Violation of provisions, §17-22-207.

Collection agencies, §17-24-103.Fair debt collection practices act,
violations, §17-24-512.**Contractors,** §17-25-103.**Cosmetologists and related
occupations,** §17-26-104.**Counselors practicing without
license,** §17-27-104.**Electrical contractors and
electricians.**Performing electrical work without
exemption or license, §17-28-309.**Interior designers,** §17-15-203.**Landscape architects,** §17-15-203.**Martial arts.**

Unlicensed activity, §17-22-303.

Precious metals buyers, §17-23-103.**Wrestling without license,** §17-22-303.**FREEDOM OF INFORMATION.****Appraisals and appraisers.**Complaints and disciplinary
proceedings.Sample appraisals and work papers,
§17-14-205.**G****GHOST IN THE ATTIC STATUTE,**
§17-10-101.**H****HARASSING COMMUNICATIONS.****Collection agencies, harassment or
abuse,** §17-24-505.**HARASSMENT.****Collection agencies, harassment or
abuse,** §17-24-505.**HEALTH.****State board of health.**Cosmetology technical advisory
committee.Rules promulgation,
§17-26-201.**HEALTH DEPARTMENT.****Cosmetologists.**Examinations, administration,
§17-26-206.Inspectors and professional employees,
employment, §17-26-204.Investigations and inspections,
§17-26-208.

Powers and duties, §17-26-205.

Registration records, §17-26-207.

HEARINGS.**Architects.**

Complaint against, §17-15-203.

Registration and licensing.

Revocation proceedings,
§17-15-309.**Cosmetology technical advisory
committee,** §17-26-208.**Interior designers.**

Complaint against, §17-15-203.

Landscape architects.

Complaint against, §17-15-203.

HEIRS.**Accountants.**Payments for practice or retirement,
§17-12-106.

HOMEBUILDERS.

Residential building contractors committee, §§17-25-501 to 17-25-514.

HOME INSPECTORS.

Ghost in the attic statute, §17-10-101.
Psychologically impacted property, §17-10-101.

HOSPITALS AND OTHER HEALTH FACILITIES.**Liability.**

Medical staffs.
 Relief from liability, §17-1-102.

I**IDENTIFICATION.****Precious metal buyers.**

Seller identification, §17-23-203.

IMMUNITY.**Accountants.**

Privity.
 No liability to persons not in privity, §17-12-701.
 Applicability of provisions, §17-12-702.
 Exceptions, §17-12-701.

Financial institutions.

Actions of appraiser hired by institution, §17-14-106.

Hospitals.

Medical staffs.
 Relief from liability, §17-1-102.

Professional services review organizations.

Relief from liability, §17-1-102.

Professional societies.

Relief of members from liability, §17-1-102.

INDICTMENTS.**Contractors.**

Violations of provisions.
 Sufficiency of indictment, §17-25-105.

INJUNCTIONS.**Accountants.**

Unlawful acts, §17-12-105.

Appraisal management company registration.

Prevention of violations, §17-14-411.

Architects.

Violations of provisions, §17-15-105.

Auctions and auctioneers.

Violation of provisions, §17-17-113.

Contractors.

Unlawful practice, §17-25-104.

INJUNCTIONS —Cont'd**Counselors.**

Unlicensed practice, §17-27-105.

Electrical contractors and electricians.

Performance of electrical without exemption or license, §17-28-309.

INSPECTIONS.**Auctioneers and auction houses.**

Suspected violations, §17-17-115.

Barbers.

Board of barber examiners, §17-20-206.
 Schools and colleges.
 Student work, §17-20-424.

Cosmetology.

Health department, §17-26-208.
 School facilities, §17-26-407.

INSURANCE.**Abstractors.**

Bonds, surety.
 Liability insurance in lieu of bond, §17-11-324.

Bail.

Automobile insurance.
 Negotiation or execution of bail through insured's automobile insurer or broker not affected, §17-19-104.

Bail bondsmen.

Commissioner of insurance.
 Defined, §17-19-101.

Combative sports elimination contests.

Contestants insured by promoters, §17-22-208.

Commissioner of insurance.

Bail bondsmen.
 Definition of "commissioner," §17-19-101.
 Defined, §17-19-101.

INTERIOR DESIGNERS.**Board of architects, landscape architects, and interior designers.**

Appointment of members, §17-15-201.
 Complaint procedures, §17-15-203.
 Composition, §17-15-201.
 Duties.
 Generally, §17-15-203.
 Election of officers, §17-15-202.
 Expenses, §17-15-201.
 Examining body, §17-15-202.
 Meetings, §17-15-202.
 Members, §17-15-201.
 Oaths.
 Members, §17-15-201.

INTERIOR DESIGNERS —Cont'd**Board of architects, landscape architects, and interior designers —Cont'd****Oaths —Cont'd**

Power of president or secretary to administer to witnesses, §17-15-203.

Officers, §17-15-202.

Powers.

Generally, §17-15-203.

President.

Election, §17-15-202.

Oaths of witnesses.

Power to administer, §17-15-203.

Qualifications of members, §17-15-201.

Quorum, §17-15-202.

Records, §17-15-204.

Removal of members, §17-15-201.

Reports, §17-15-204.

Seal of board, §17-15-202.

Secretary.

Election, §17-15-202.

Oaths of witnesses.

Power to administer, §17-15-203.

Treasurer.

Election, §17-15-202.

Vacancies, §17-15-201.

Complaints against, §17-15-203.

Continuing education, §17-15-205.

Fines for violations of chapter, §17-15-203.

Records.

Board, §17-15-204.

INTOXICATION.**Cosmetology.**

Grounds for disciplinary action, §17-26-105.

INVESTIGATIONS.**Cosmetology.**

Health department, §17-26-208.

J**JUDICIAL NOTICE.****Accountants.**

Seal of state board of public accountancy, §17-12-202.

JURISDICTION.**Auctions and auctioneers.**

Disciplinary proceedings, §17-17-407.

L**LANDSCAPE ARCHITECTS.****Board of architects, landscape architects, and interior designers.**

Appointment of members, §17-15-201.

Complaint procedures, §17-15-203.

Composition, §17-15-201.

Duties.

Generally, §17-15-203.

Election of officers, §17-15-202.

Expenses, §17-15-201.

Examining body, §17-15-202.

Meetings, §17-15-202.

Members, §17-15-201.

Oaths.

Members, §17-15-201.

Power of president or secretary to administer to witnesses, §17-15-203.

Officers, §17-15-202.

Powers.

Generally, §17-15-203.

President.

Election, §17-15-202.

Oaths of witnesses.

Power to administer, §17-15-203.

Qualifications of members, §17-15-201.

Quorum, §17-15-202.

Records, §17-15-204.

Removal of members, §17-15-201.

Reports, §17-15-204.

Seal of board, §17-15-202.

Secretary.

Election, §17-15-202.

Oaths of witnesses.

Power to administer, §17-15-203.

Treasurer.

Election, §17-15-202.

Vacancies, §17-15-201.

Complaints against, §17-15-203.

Continuing education, §17-15-205.

Fines for violations of chapter, §17-15-203.

Hearings.

Complaint against, §17-15-203.

Notice.

Complaint against, §17-15-203.

Oaths.**Board.**

Witnesses.

Officers authorized to administer oaths, §17-15-203.

LANDSCAPE ARCHITECTS —Cont'd**Records.**

Board, §17-15-204.

Reports.

Board, §17-15-204.

LICENSED APPRAISERS.

Generally, §§17-14-101 to 17-14-308.

LICENSES AND PERMITS.**Athletic commission.**

Authority to issue annual licenses for promoters, etc., §17-22-204.

Bail bondsmen.

Generally, §§17-19-101 to 17-19-111.

Licensing, §§17-19-201 to 17-19-212.

Child support.

Occupational, professional and business licensing.

Collection of personal information for purpose of child support enforcement, §17-1-104.

Collection agencies, §§17-24-301 to 17-24-310.

Contractors.

General provisions, §§17-25-301 to 17-25-316.

Licensing board, §§17-25-201 to 17-25-206.

Cosmetology, §§17-26-302 to 17-26-321.

Criminal offenders.

Generally, §17-1-103.

Electrical contractors and electricians.

General provisions, §§17-28-301 to 17-28-311.

Veterans.

Examinations.

Ten percent credit, §17-1-101.

LIMITED LIABILITY COMPANIES.**Accountants.**

Licensee association with unregistered firms, §17-12-404.

Registration of certified public accountant firms, §17-12-401.

Registration of public accountant firms, §17-12-402.

Sanctions for violations, §17-12-602.

LONG ARM STATUTE.**Collection agencies.**

Nonresident collection agencies, §17-24-401.

M**MALPRACTICE.****Cosmetology.**

Gross malpractice as grounds for disciplinary action, §17-26-105.

MARTIAL ARTS COMPETITIONS.

Athletic commission, §§17-22-201 to 17-22-208.

Bond of licensee, §17-22-304.

Definitions, §17-22-101.

Licenses.

Bond of licensee, §17-22-304.

Denial or revocation, §17-22-305.

Issuance, §17-22-302.

Penalty for unlicensed activity, §17-22-303.

Matches and exhibitions, §17-22-301.

Penalties for violation of provisions, §17-22-207.

Promoters.

Licenses, §17-22-302.

Surety bond, §17-22-304.

Regulation of combative sports, §17-22-206.

Sponsor organizations, §17-22-301.

Fees, §17-22-306.

Licenses, §17-22-303.

Reports, §17-22-306.

MINES AND MINERALS.

Precious metal buyers, §§17-23-101 to 17-23-208.

MOTOR VEHICLE DEALERS.

Automotive parts dealers, §17-18-101 to 17-18-104.

Purpose of provisions, §17-18-101.

Records, §17-18-104.

State police.

Regulatory power, §17-18-103.

Violations of provisions, §17-18-102.

Parts dealers, §§17-18-101 to 17-18-104.

MOTOR VEHICLE REGISTRATION.**Definitions.**

Applicability, §17-14-201.

MUNICIPALITIES.**Auctions and auctioneers.**

Taxable fees.

Exemptions, §17-17-107.

Electrical contractors and electricians.

Local regulatory authority, §17-28-305.

N**NEEDLES.****Cosmetology.**

Electrologist defined, §17-26-102.

NONRESIDENTS.

Appraisers license or certificate, §17-14-306.

NONRESIDENTS —Cont'd**Athletic agents.**

Service of process on, §17-16-103.

Auctions and auctioneers.

Actions against, §17-17-306.

Licensing generally, §17-17-304.

Reciprocity, §17-17-305.

Collection agencies.

Service of process, §§17-24-401 to 17-24-404.

Precious metal buyers.

Licenses.

Bonds, surety, §17-23-202.

NOTICE.**Abstracters.**

Certificate of authority.

Expiration of certificate, §17-11-322.

Certificate of registration.

Examinations, §§17-11-302, 17-11-305.

Accountants.

Revocation or suspension of license or certificate, §17-12-603.

Architects.

Complaint against, §17-15-203.

Practice by person holding national but not state certification, §17-15-312.

Registration and licensing.

Revocation proceedings, §17-15-309.

Athletic agents.

Cancellation of agency contract.

Required by student-athlete, §17-16-112.

Child abuse and neglect.

Professional licensees, notice of online and web-based reporting program, §17-1-105.

Collection agencies.

Accounting to client.

Annual notice.

Renewal of license.

Conditions of renewal, §17-24-304.

Requirement, §17-24-310.

Contractors.

Completion of contract, §17-25-406.

Failure to give notice.

Effect, §17-25-408.

Licenses.

Revocation or reissuance, §17-25-309.

Licensing board.

Meetings, §17-25-202.

Preliminary notice.

Filed with bond, §17-25-403.

NOTICE —Cont'd**Cosmetology.**

Change of address, §17-26-317.

Interior designers.

Complaint against, §17-15-203.

Landscape architects.

Complaint against, §17-15-203.

Precious metal buyers.

"Melt-down" bullion, §17-23-204.

Stolen property.

Extension of holding periods, §17-23-207.

NUISANCES.**Architects.**

Violations of provisions, §17-15-105.

NURSES.**Criminal offenders.**

Registration, certification or licensing in profession or occupation.

Inapplicability of provisions to nurses, §17-1-103.

Examinations.

Licenses.

Ten percent credit.

United States nurses, §17-1-101.

Licenses.

Examinations.

Ten percent credit.

United States nurses, §17-1-101.

United States.

Examinations.

Ten percent credit, §17-1-101.

Examining board to receive certified copy of honorable discharge, §17-1-101.

O**OATHS OR AFFIRMATIONS.****Architects.**

Board of architects, landscape architects, and interior designers.

Oath of members, §17-15-201.

Witnesses.

Officers authorized to administer oaths, §17-15-203.

Contractors.

Licensing board.

Oath of office, §17-25-201.

Cosmetology technical advisory committee, §17-26-201.**Interior designers.**

Board.

Witnesses.

Officers authorized to administer oaths, §17-15-203.

OATHS OR AFFIRMATIONS —Cont'd**Landscape architects.**

Board.

Witnesses.

Officers authorized to administer oaths, §17-15-203.

P**PAGEANTS.****Beauty pageants**, §§17-21-101 to 17-21-205.**PARTNERSHIPS.****Appraiser's registration, license or certificate not issued to**, §17-14-301.**Architects.**

Registration and licensing, §17-15-303.

Contractors.

Engaging in business of contracting, §17-25-311.

PERJURY.**Barber**, §17-20-104.**PHYSICIANS AND SURGEONS.****Cosmetology.**

Exemption from cosmetology provisions, §17-26-103.

POWER OF ATTORNEY.**Bail bondsmen.**Application for license to include power of attorney, §17-19-202.
Stacking prohibited, §17-19-110.**PRECIOUS METAL BUYERS.****Applicability of provisions.**

Exemptions, §17-23-102.

Bonds, surety.

Licenses.

Nonresidents, §17-23-202.

Damages.

Violations of provisions, §17-23-104.

Definitions, §17-23-101.**Disclosures**, §17-23-205.**Exemptions from provisions**, §17-23-102.**Fees.**

Deposit of fees, §17-23-208.

Licenses, §17-23-202.

Funds.

Disposition of funds, §17-23-208.

Holding periods.

Possession of merchandise, §17-23-207.

Identification.

Seller identification, §17-23-203.

Licensees.

Disclosures, §17-23-205.

PRECIOUS METAL BUYERS —Cont'd**Licensees —Cont'd**

Holding periods.

Possession of merchandise, §17-23-207.

Identification of seller, §17-23-203.

Notice.

Stolen merchandise.

Extension of holding periods, §17-23-207.

Records, §17-23-206.

Licenses.

Applications, §17-23-202.

Doing business.

Requirement of license, §17-23-201.

Fees, §17-23-202.

Issuance.

Waiting period, §17-23-202.

Nonresidents.

Bonds, surety, §17-23-202.

Requirement of license, §17-23-201.

"Melt-down" bullion, §17-23-204.**Notice.****"Melt-down" bullion**, §17-23-204.

Stolen property.

Extension of holding periods, §17-23-207.

Penalties.

Violations of provisions, §17-23-103.

Price.

Disclosures, §17-23-205.

Records, §17-23-206.**Rules and regulations.**

State police, §17-23-202.

State police fund.

Disposition of fees collected under chapter, §17-23-208.

Violations of provisions.

Damages, §17-23-104.

Penalties, §17-23-103.

Weight.

Disclosures, §17-23-205.

PRIVILEGES.**Counselors**, §17-27-311.**PROFESSIONAL COUNSELORS.****Alcoholism and drug abuse**, §§17-27-401 to 17-27-416.**PROFESSIONS AND OCCUPATIONS.****Abstracters**, §§17-11-101 to 17-11-343.**Accountants**, §§17-12-101 to 17-12-604.**Agricultural consultants**, §§17-13-101 to 17-13-110.**Architects.**

General provisions, §§17-15-101 to 17-15-312.

PROFESSIONS AND OCCUPATIONS

—Cont'd

- Athlete agents**, §§17-16-101 to 17-16-119.
- Auctions and auctioneers**, §§17-17-101 to 17-17-409.
- Barbers**, §§17-20-101 to 17-20-503.
- Beauty pageants**, §§17-21-101 to 17-21-205.
- Boxing, wrestling, etc.**, §§17-22-201 to 17-22-306.
- Child abuse and neglect, mandatory reporters of.**
 - Notice to licensees of online and web-based reporting program, §17-1-105.
- Child support enforcement.**
 - Collection of personal information for purpose of child support enforcement, §17-1-104.
- Collection agencies**, §§17-24-101 to 17-24-404.
- Contractors**, §§17-25-101 to 17-25-514.
- Cosmetology**, §§17-26-101 to 17-26-418.
- Counselors**, §§17-27-101 to 17-27-416.
- Criminal offenders.**
 - Registration, certification and licensing, §17-1-103.
- Electrical contractors and electricians**, §§17-28-101 to 17-28-311.
- Examinations.**
 - United States veterans and nurses. Ten percent credit, §17-1-101.
- Hospital medical staffs.**
 - Liability.
 - Relief from liability, §17-1-102.
- Liability.**
 - Hospital medical staffs.
 - Relief from liability, §17-1-102.
 - Professional services review organizations.
 - Relief from liability, §17-1-102.
 - Professional societies.
 - Relief from liability, §17-1-102.
- Precious metal buyers**, §§17-23-101 to 17-23-208.
- Professional services review organizations.**
 - Liability.
 - Relief from liability, §17-1-102.
- Professional societies.**
 - Liability.
 - Relief from liability, §17-1-102.
- Veterans.**
 - Examination credit, §17-1-101.
- Wrestling, boxing, etc.**, §§17-22-201 to 17-22-306.

PUBLIC FUNDS.**Accountants.**

- State board of public accountancy.
- Disposition of funds, §17-12-204.

Auctions and auctioneers.

- Education and recovery fund.
- Discipline of licensees generally, §§17-17-401 to 17-17-409.
- Trust fund to pay claims against auctioneers, §17-17-401.

Barbers.

- Board of barber examiners, §17-20-208.
- Disposition of funds, §17-20-209.

Contractors.

- Disposition of funds, §17-25-205.

Precious metal buyers.

- Disposition of funds, §17-23-208.

State police.

- State police fund.
- Precious metal buyers.
 - Fees.
 - Disposition, §17-23-208.

PUNITIVE DAMAGES.**Counselors.**

- Unlicensed practice, §17-27-104.

R**RATES AND CHARGES.**

- Collection agencies**, §17-24-309.

REAL PROPERTY.

- Ghost in the attic statute**, §17-10-101.
- Sales.**

- Psychologically impacted property, §17-10-101.

Title.

- Abstracts of title.
- Abstracters.
 - General provisions, §§17-11-101 to 17-11-343.

RECIPROCITY.**Accountants.**

- Certified public accountants, §17-12-308.
- Credit for out-of-state examination, §17-12-307.
- Substantial equivalency standards, §17-12-311.

Architects.

- Practice by architect with national or out-of-state certification, §17-15-312.

Auctions and auctioneers.

- Licenses.
- Nonresidents, §17-17-305.

RECIPROCITY —Cont'd**Cosmetology**, §17-26-315.**Electrical contractors and electricians.**

Licenses, §17-28-306.

RECORDS.**Abstracters.**

Public records.

Access, §17-11-323.

Accountants.

State board of public accountancy.

Duty to keep records of proceedings,
§17-12-202.

Working papers of accountant.

Ownership, §17-12-109.

Architects.Board of architects, landscape
architects, and interior designers,
§17-15-204.**Athletic agents.**

Required, preservation, §17-16-113.

Contractors.

Licensing board, §17-25-206.

Cosmetology.

Health department.

Registration records, §17-26-207.

Interior designers.Board of architects, landscape
architects, and interior designers,
§17-15-204.**Landscape architects.**Board of architects, landscape
architects, and interior designers,
§17-15-204.**Precious metal buyers**, §17-23-206.**REGISTERED APPRAISERS,**

§§17-14-101 to 17-14-308.

REGISTRATION.**Abstracters.**Certificate of registration, §§17-11-301
to 17-11-305.**Athlete agents.**

Generally, §§17-16-101 to 17-16-119.

Barbers.Certificate of registration, §§17-20-301
to 17-20-310.**Cosmetology.**

Schools and establishments.

Student registration, §17-26-415.

Criminal offenders.

Professions and occupations.

Generally, §17-1-103.

REPORTS.**Accountants.**State board of public accountancy,
§17-12-204.**REPORTS —Cont'd****Architects.**Board of architects, landscape
architects, and interior designers,
§17-15-204.**Barbers.**

Board of barber examiners.

Annual reports, §17-20-207.

Contractors.

Licensing board, §17-25-206.

Interior designers.Board of architects, landscape
architects, and interior designers,
§17-15-204.**Landscape architects.**Board of architects, landscape
architects, and interior designers,
§17-15-204.**RESIDENCY.****Accountants.**

Certified public accountants.

Reciprocity for residency
requirements, §17-12-308.**RESIDENTIAL BUILDING****CONTRACTORS COMMITTEE,**

§§17-25-501 to 17-25-514.

S**SALES.****Real property.**Psychologically impacted property,
§17-10-101.**SCHOOLS AND EDUCATION.****Accountants.**

Certified public accountants.

Requirement, §17-12-302.

Continuing education requirement,
§17-12-502.**Agricultural consultants.**

Licenses.

Qualifications, §17-13-107.

Cosmetology.Schools and establishments,
§§17-26-401 to 17-26-418.**Counselors.**Qualifications for licenses,
§§17-27-301, 17-27-302.**Electrical contractors and electricians.**Continuing education requirements,
§17-28-311.**SEALS AND SEALED INSTRUMENTS.****Abstracters.**

Licensees' seals, §17-11-342.

SEALS AND SEALED**INSTRUMENTS —Cont'd****Accountants.**

State board of public accountancy,
§17-12-202.

Architects.

Board of architects, landscape
architects, and interior designers,
§17-15-202.

Registrants, §17-15-307.

Board of barber examiners.

Seal of board, §17-20-202.

Contractors.

Licensing board.

Seal of board, §17-25-202.

Interior designers.

Board of architects, landscape
architects, and interior designers,
§17-15-202.

Landscape architects.

Board of architects, landscape
architects, and interior designers,
§17-15-202.

**SERVICE OF NOTICE, PROCESS
AND OTHER PAPERS.****Accountants.**

Revocation or suspension of license or
certificate, §17-12-603.

Appraisers not residents of state.

Consent to service upon secretary of
state, §17-14-306.

Architects.

Notice of complaint against,
§17-15-203.

Athletic agents.

Nonresident agents acting in state,
§17-16-103.

Collection agencies.

Nonresident collection agencies,
§§17-24-401 to 17-24-404.

Interior designers.

Notice of complaint against,
§17-15-203.

Landscape architects.

Notice of complaint against,
§17-15-203.

Long arm statute.

Collection agencies, §17-24-401.

SEX OFFENDER REGISTRATION.**Appraisals and appraisers.**

Failure to inquire or disclose about
registrant.

Recovery of damages, §17-10-101.

Real estate brokers and salesmen.

Failure to inquire or disclose about
registrant.

Recovery of damages, §17-10-101.

SIGNATURES.**Athlete agents.**

Agency contracts.

Electronic records and signatures,
§17-16-119.

SPORTS.**Athletic commission.**

General provisions, §§17-22-201 to
17-22-208.

STATE BOARD OF BARBER

EXAMINERS, §§17-20-201 to
17-20-209.

**STATE BOARD OF COLLECTION
AGENCIES.****Collection agencies.**

Board of collection agencies,
§§17-24-201 to 17-24-203.

STATE-CERTIFIED APPRAISERS.

Generally, §§17-14-101 to 17-14-308.

STATE-LICENSED APPRAISERS.

Generally, §§17-14-101 to 17-14-308.

STATE POLICE.**Funds.**

State police fund.

Precious metal buyers.

Fees.

Disposition, §17-23-208.

STATE-REGISTERED APPRAISERS.

Generally, §§17-14-101 to 17-14-308.

STAYS.**Auctions and auctioneers,**

complaints against.

Appeal of disciplinary decision,
§17-17-408.

SUBPOENAS.**Accountants.**

Revocation or suspension of license or
certificate.

Powers of board and of accused,
§17-12-603.

**Appraiser licensing and certification
board to issue.**

Power to issue, §17-14-203.

Bail bondsman.

Board, §17-19-209.

SUBROGATION.**Auctions and auctioneers,**

complaints against.

Claimant, subrogation of rights
against licensee upon receipt of
payment, §17-17-409.

SUBSTANCE ABUSE.**Counselors for alcoholism and drug abuse, §§17-27-401 to 17-27-416.**

Certifications.

Associates, §17-27-409.

Confidentiality of information.

Exception, §17-27-416.

Grievance procedure, §17-27-414.

Registered clinical supervisors,
§17-27-411.

Renewal, §17-27-413.

Technicians, §17-27-410.

Definitions, §17-27-401.

Exemptions, §17-27-403.

Licenses, §17-27-408.

Confidentiality of information.

Exception, §17-27-416.

Grievance procedure, §17-27-414.

Renewal, §17-27-413.

Licensing board, §17-27-404.

Compensation, §17-27-405.

Defined, §17-27-401.

Deposit of money, §17-27-415.

Powers and duties, §17-27-406.

Violations of provisions, §17-27-407.

Purpose of provisions, §17-27-402.

T**TEACHERS.****Criminal offenders.**Registration, certification or licensing
in trade, profession or occupation.Inapplicability of provisions to
teachers, §17-1-103.**TITLE.****Real property.**

Abstracts of title.

Abstracters.

General provisions, §§17-11-101 to
17-11-343.**TRANSCRIPTS.****Accountants.**Revocation or suspension of license or
certificate.Proceedings before board,
§17-12-603.**U****UNIFORM LAWS.****Athlete agents.**Uniform athletic agents act,
§§17-16-101 to 17-16-119.**UNITED STATES.****Nurses.**

Examinations.

Ten percent credit, §17-1-101.

Examining board to receive
certified copy of honorable
discharge, §17-1-101.**V****VENUE.****Appraisers violating law.**

Actions against, §17-14-308.

VETERANS.**Examinations.**

Licenses and permits.

Ten percent credit, §17-1-101.

Examining board to receive
certified copy of honorable
discharge, §17-1-101.**Licenses.**

Examinations.

Ten percent credit, §17-1-101.

Examining board to receive
certified copy of honorable
discharge, §17-1-101.**Permits.**

Examinations.

Ten percent credit, §17-1-101.

Examining board to receive
certified copy of honorable
discharge, §17-1-101.**Professions and occupations.**

Examination credit, §17-1-101.

W**WITNESSES.****Architects.**

Registration and licensing.

Revocation proceedings, §17-15-309.

WORKERS' COMPENSATION.**Contractors.**

Coverage required, §17-25-316.

Residential building contractors.

Licensure requirements, §17-25-514.

